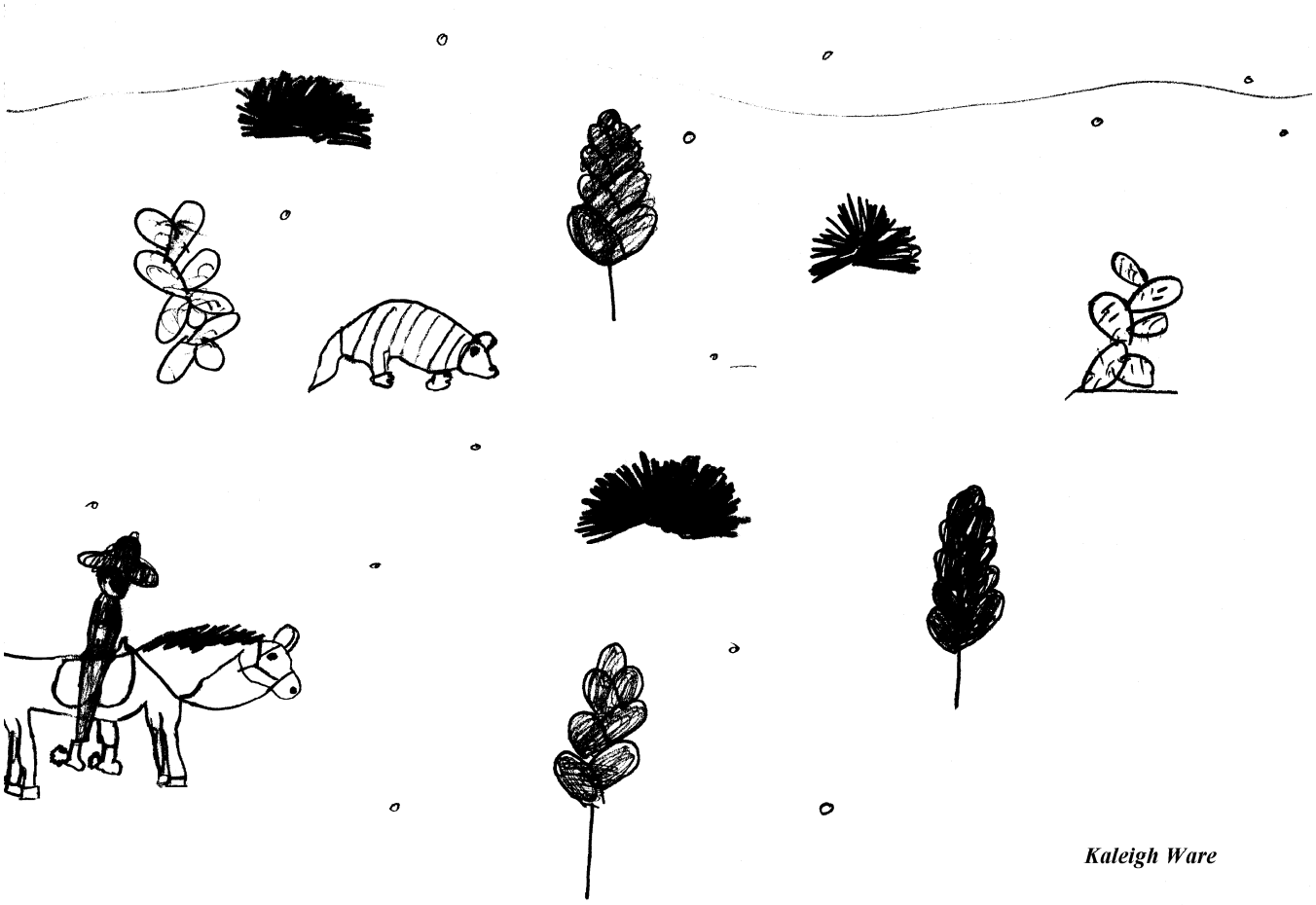
TEXAS REGISTER

Volume 34 Number 34 *August 21, 2009* *Pages 5615 - 5838*



Kaleigh Ware

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0734

The Honorable Tom Maness

Jefferson County Criminal District Attorney

Jefferson County Courthouse

1001 Pearl Street, 3rd Floor

Beaumont, Texas 77701-3545

Re: Calculation of the maximum time allowable for tax abatement under Tax Code section 312.204(d) (RQ-0784-GA)

S U M M A R Y

The maximum ten-year tax abatement period authorized under Tax Code section 312.204(a) may commence in a year subsequent to the year in which an agreement providing for the tax abatement is entered into by the taxing unit and the owner of the property subject to the agreement.

Opinion No. GA-0735

The Honorable Armando G. Barrera

79th Judicial District Attorney

Post Office Drawer 3157

Alice, Texas 78333

Re: Authority of a county bail bond board to assess a fee to bail bond companies to recover the cost of employing a bail bond administrator (RQ-0786-GA)

S U M M A R Y

A county bail bond board may not impose a fee on bonding companies to pay for the cost of employing a bail bond administrator.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200903496
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 11, 2009

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-484. The Texas Ethics Commission has been asked to consider whether an elected officeholder may accept transportation, meals, and lodging from a corporation or labor organization in return for addressing an audience or participating in a seminar when the reason they are asked to participate is their public position or duties and the service is more than perfunctory. (AOR-547)

SUMMARY

Anytime an officeholder benefits from money spent by a corporation or labor organization, a fact question arises as to whether the corporation has given a thing of value to the officeholder for purposes of one of the laws under the Ethics Commission's jurisdiction. Pursuant to Title 15 of the Election Code, an elected officeholder may not accept transportation, meals, and lodging from a corporation or labor organization in return for addressing an audience or participating in a seminar if the officeholder's services are in connection with his or her duties or activities as an officeholder. This advisory opinion is intended to provide guidance for future activity and not intended to criminalize past activity.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200903426
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: August 7, 2009

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture (the department) adopts on an emergency basis an amendment to §19.51 in order to expand the quarantined area for the Date Palm Lethal Decline Quarantine. In late June of 2009, some of the sabal palms and date palms located in Kleberg County were suspected to be infected with the date palm lethal decline disease. Consequently, samples from the apparently infected sabal palms and date palms were collected and analyzed for the disease by the Texas Plant Disease Diagnostic Laboratory at College Station. The test results, received on or about July 25, 2009, showed 3 of the 10 samples to be positive for the date palm lethal decline disease. Because the three infected palms are located within approximately 100 feet of one another, they are considered as originating from one site for establishment of the quarantined area. The amended section is adopted on an emergency basis to prevent spread of the date palm lethal decline. The amendment will facilitate treatment of the disease vectors and restrict movement of the quarantined articles located within two miles of an infected tree as described in the Date Palm Lethal Decline Quarantine.

The department believes it is necessary to take this immediate action to prevent the spread of the date palm lethal decline into non-infected areas of Texas, and adoption of the proposed emergency amendment to the Date Palm Lethal Decline Quarantine is both necessary and appropriate. The palm nursery industry, landscapers, homeowners and others who use the quarantined palms are in peril because without the emergency amendment, chances of these palms becoming infected with the disease increase significantly. Treatment options to control the disease are very limited. Moreover, once the spear leaf has died due to the disease, scientists recommend removal of the tree as soon as possible.

Amended §19.51 adds a 2-mile area surrounding the three infected palms occurring in close proximity at one site in Kleberg County of Texas to the quarantined area. The department will be proposing adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.51. Quarantined Areas.

The quarantined areas are:

(1) Cameron, Hidalgo, Nueces, and Willacy counties of Texas. [~~, and the~~]

(2) The area within two miles of palm trees infected with the date palm lethal decline disease located at the following site in Kleberg County of Texas.

(A) Latitude 27.52701 N and longitude 97.88132 W.

(B) Detail information on the areas described in subparagraph (A) of this paragraph may be obtained from Regulatory Programs Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(3) The State of Florida.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903333
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective Date: August 3, 2009
Expiration Date: November 30, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission (the commission) proposes an amendment to §34.1 and §34.5, and new §§34.46, 34.73, and 34.75, relating to the regulation of lobbyists under Chapter 305 of the Government Code.

Section 34.1(5) defines the term "independent contractor" to clarify to whom the new reporting requirements created by House Bill (HB) 3445, 81st Legislature, Regular Session, apply.

Section 34.5, which contains exceptions from the requirement to register as a lobbyist, is amended by deleting paragraphs (5) and (11) to reflect the change in HB 3445, 81st Legislature, Regular Session.

Section 34.46 clarifies to whom the new reporting requirements and the new $50 lobby registration fee created by HB 3445, 81st Legislature, Regular Session, apply.

Section 34.73 sets out the information that is required to be reported under §305.022 of the Government Code, as amended by HB 3445, 81st Legislature, Regular Session, by an independent contractor who is required to register as a lobbyist.

Section 34.75 sets out the information that is required to be reported under §305.022 of the Government Code, as amended by HB 3445, 81st Legislature, Regular Session, by a registered lobbyist who is paid a sales commission or such fee by a state agency.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined that there may be a direct adverse effect on small businesses or micro-businesses that communicate with state agencies in the executive branch of state government with the intent to influence a purchasing decision or negotiations regarding such decisions because they may now be required to register as a lobbyist as a result of the amendments made to the lobby law (Chapter 305 of the Government Code) by HB 3445, 81st Legislature, Regular Session.

Mr. Reisman has further determined that there may be an economic cost to persons that communicate with state agencies in the executive branch of state government with the intent to influence a purchasing decision or negotiations regarding such decisions because they may now be required to register as a lobbyist as a result of the amendments made to the lobby law (Chapter 305 of the Government Code) by HB 3445, 81st Legislature, Regular Session.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the public comment period or at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.1, §34.5

The amendments to §34.1 and §34.5 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §34.1 and §34.5 affect Chapter 305 of the Government Code.

§34.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Independent contractor--In §305.022 of the Government Code and this chapter, means a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by §305.022(e) of the Government Code, of a vendor.

§34.5. Certain Compensation Excluded.

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code, §305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

(1) - (4) (No change.)

[~~(5) communicating in the capacity of one's service on an advisory committee or task force appointed by a member;~~]

(5) [~~(6)~~] responding to a specific request for information from a member of the legislative or executive branch, when the request was not solicited by or on behalf of the person providing the information;

(6) [~~(7)~~] communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(7) [~~(8)~~] providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(8) [~~(9)~~] providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rulemaking [~~rule-making~~] proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or

(9) [~~(10)~~] providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member).[~~; or~~]

[~~(11) communicating to a member of the executive branch concerning purchasing decisions of a state agency, or negotiations regarding such decisions.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903475
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.46

The new §34.46 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §34.46 affects Chapter 305 of the Government Code.

§34.46. Registration under §305.0041 of the Government Code.

(a) For purposes of the $50 registration fee set by §305.005(c)(2) of the Government Code, a person is required to register under §305.0041 of the Government Code if:

(1) the person is an independent contractor;

(2) the person's only direct communication with a member of the executive branch is as an independent contractor;

(3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions and the amount of the purchasing decision does not exceed $10 million; and

(4) the person is also required to register under the compensation or reimbursement threshold in §305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by §305.003(a)(1) of the Government Code.

(b) A person required to register under §305.0041 of the Government Code is considered a registrant for purposes of this chapter and Chapter 305 of the Government Code.

(c) An independent contractor who is required to register as a lobbyist under Chapter 305 of the Government Code but who does not meet all the criteria in subsection (a) of this section is subject to the $500 registration fee set by §305.005(c)(3) of the Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903476
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.73, §34.75

The new §34.73 and §34.75 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new §34.73 and §34.75 affect Chapter 305 of the Government Code.

§34.73. Reporting by Independent Contractor.

(a) In addition to the contents required by §305.005 of the Government Code and this chapter, a registration filed by an independent contractor whose compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions must:

(1) disclose the vendor as a client;

(2) indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions;

(3) disclose the amount of the sales commission or such fee;

(4) disclose the amount of the purchasing decision;

(5) if the amount of the sales commission or such fee is based on a percentage of the sale, disclose the amount of the percentage; and

(6) describe the product or service that is the subject of the communication.

(b) If the amount of the sales commission or such fee is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the sales commission or such fee and the method under which that amount will be computed.

(c) If the amount of the purchasing decision is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the purchasing decision and the method under which that amount will be computed.

§34.75. Reporting of Commission or Fee Paid by State Agency.

(a) In addition to the contents required by §305.005 of the Government Code and this chapter, a registration filed by a person who is paid a sales commission or such fee by a state agency must:

(1) disclose the state agency as a client;

(2) indicate that the client is a state agency;

(3) provide a description of the subject matter for which the person is paid a sales commission or such fee; and

(4) disclose the amount of the sales commission or such fee.

(b) If the amount of the sales commission or such fee is not known at the time of the reporting, the registration must disclose a reasonable estimate of the maximum amount of the sales commission or such fee and the method under which that amount will be computed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903477
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-5800

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.4, §227.7

The Prescribed Burning Board (the Board) proposes amendments to Chapter 227, §227.4, concerning application fees and §227.7, concerning the term of certification as a certified prescribed burn manager. The proposed amendments to §227.4 and §227.7 change the term of certification from five to two years. The amendments are proposed to make the sections consistent with changes made to the Natural Resources Code, Chapter 153 by Senate Bill 1016, 81st Legislature, 2009 (SB 1016).

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five-year period the proposed amended sections are in effect there will be minimal increase in state revenue as a result of administering or enforcing the amended section, due to the requirement that certified burn managers be certified every two, instead of every five years. The approximate increase in state revenue, based upon the current number of certified burn managers will be $250 in fiscal year 2010 and $900 per year for fiscal year 2011 and the three years thereafter. There will be no fiscal implications to local government.

Mr. Bush has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections will be the verification of insurance, training and experience requirements of certified as prescribed burn managers on a more frequent basis, which will ensure that trained and experienced persons are conducting prescribed burning activities in Texas, and ultimately help reduce the threat of wildfires. There will be a minimal cost to micro-businesses, small businesses, or individuals required to comply with the proposed amendments due to the change of the licensing period from five years to two years. Based on the existing $50 certification fee, the per year cost of certification will increase from $10 per year to $25 per year. The existing Board rules regarding training and experience required for certification, and the minimum insurance requirements are not changed by the amendments; therefore, there will be no additional fees or requirements. The proposed amendments are required by law, and therefore, no regulatory flexibility analysis is required.

Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers; and §153.048 of the Natural Resources Code, as amended by SB 1016, which provides that a prescribed burn manager certification is for a two-year period.

The code that will be affected by this proposal is the Natural Resources Code, Chapter 153.

§227.4. Application;[,] Fees.

(a) - (b) (No change.)

(c) The fee for a new certification will be prorated as outlined on the application form to coincide with the two-year [~~5-year~~] expiration date. Renewals made after the expiration date may be subject to late fees.

(d) Certification and renewal fees are $50.00 for a two- [~~5~~] year license, contingent upon annual proof of insurance.

(e) - (f) (No change.)

§227.7. Term of Certification.

Certification shall be good for two [~~five~~] years, contingent upon providing annual proof of insurance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 4, 2009.

TRD-200903345

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Earliest possible date of adoption: September 20, 2009

For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 80, §80.94 and proposes to amend §§80.3, 80.25, 80.32, 80.33, 80.40, 80.41, 80.90, 80.92, and 80.100, relating to the regulation of the manufactured housing program. The rules are revised to comply with HB 2238 (81st Legislative Session, 2009), Federal Regulations, and for clarification purposes.

Section 80.3(b)(2): Statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.3(k)(2): Statutory compliance with §1201.009 revised by HB 2238 and to enable the user enhancements available with the new system.

Section 80.25(i)(3) and (4): To comply with Federal Regulations.

Section 80.25(k)(3): To comply with Federal Regulations.

Section 80.32(b): To comply with 24 CFR §3288.5 of the Federal Regulations.

Section 80.33(g): Statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.33(k)(3): Statutory compliance with federal mandates charging installers with the responsibility of site preparation for all new homes. This provision can only apply to used homes.

Section 80.40(e): Statutory compliance, insurance requirement repealed by HB 2238.

Section 80.41(a): Statutory compliance, insurance requirement repealed by HB 2238.

Section 80.41(a)(2)(A): Statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.41(a)(2)(B): Statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.41(a)(2)(C): Statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.41(d)(2): Statutory compliance with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.41(d)(3): Statutory compliance with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.41(d)(4)(E): Statutory compliance with §1201.104(e) revised by HB 2238. Live courses are no longer required.

Section 80.90(c)(2)(C): Statutory compliance with §1201.058(e), revised by HB 2238, only permits the waiving of a fee if the Governor by executive order or proclamation declares a state of disaster under Chapter 418.

Section 80.92(b): Statutory compliance with §1201.204(c) revised by HB 2238.

New §80.94: The report that is provided by hardcopy each month to the county tax assessor-collectors and county appraisal districts can be provided electronically, if requested.

Section 80.100(a)(30): Revised the title of the form from Notice of Lien for Tax Lien/Release to Notice of Tax Lien/Release.

Section 80.100(a)(31): Removing the Notice of Lien (Other than a Tax Lien) form and replacing with the new Dispute Resolution form.

Section 80.100(a)(38): Revised the name of the from for statutory compliance with §1201.104(f) revised by HB 2238.

Section 80.100(a)(43): Revised the name of the form from Application for License Instruction Provider to Application for Continuing Education Provider.

Figure: 10 TAC §80.100(b)(1): Revised to correct errors in the block for the Department's use.

Figure: 10 TAC §80.100(b)(2): Statutory compliance, insurance requirement repealed by HB 2238. Added a field for date of birth in Block 9 to make it easier to run criminal history checks on related persons.

Figure: 10 TAC §80.100(b)(3): Statutory compliance, insurance requirement repealed by HB 2238.

Figure: 10 TAC §80.100(b)(4): Statutory compliance with §1201.103(d)(1) and §1201.104(c) revised by HB 2238.

Figure: 10 TAC §80.100(b)(7): Statutory compliance with §1201.204(c) revised by HB 2238. By emphasizing this requirement as a footer on the form, it may reduce the likelihood of being forgotten or not submitted, as is the case now.

Figure: 10 TAC §80.100(b)(11): Revised form to correct grammatical and formatting errors.

Figure: 10 TAC §80.100(b)(14): Statutory compliance with §1201.009 and §1201.204(c) revised by HB 2238.

For changes to comply with §1201.204(c): Need language directing the creditor to specify each home secured so they can be notified if we're made aware that the home is sold out of trust (current filing process doesn't specify each home covered under the TIF). Include summary as second page so homes can be specified by label and serial number(s).

For changes to comply with §1201.009: Adding a file number will enable the user to update the homes secured under the filing, electronically (with the new system).

Figure: 10 TAC §80.100(b)(16): Revised form to correct grammatical and formatting errors.

Figure: 10 TAC §80.100(b)(17): To comply with the Federal Regulations relating to smoke alarms (§3285.703), water testing (§3285.603(e) and §3280.612) and drainage testing (§3285.605(c)).

Figure: 10 TAC §80.100(b)(19): Statutory compliance with §§1201.2055(b), 1201.2055(i), and 1201.219(b) revised by HB 2238. The revisions improve efficiency by incorporating the

filing of a mortgage lien on the SOL application and eliminating the Notice of Lien (Other than a Tax Lien) form. The notary requirement was repealed in HB 2238.

Figure: 10 TAC §80.100(b)(24): Added election back into form since HB 2238 repealed the notary requirement in §1201.2055(b). This will improve efficiency since it eliminates the Analyst from having to make a copy of the application for the applicant to make election and lets us utilize the addendum.

Figure: 10 TAC §80.100(b)(27): Removed payment information because there is no fee for taxing entities to obtain a Texas Seal.

Figure: 10 TAC §80.100(b)(29): Statutory compliance with §1201.206(a) revised by HB 2238.

Figure: 10 TAC §80.100(b)(30): Revised the title of the form, contact phone numbers, signature lines, and information in the section for Department use.

New Figure: 10 TAC §80.100(b)(31): The new Dispute Resolution form is added to comply with Federal Regulations, 24 CFR §3288.5.

Figure: 10 TAC §80.100(b)(31): Deleting the Notice of Lien (Other than a Tax Lien) form because no separate form is needed since §1201.219(b), revised by HB 2238, enables the notice to be incorporated in the Statement of Ownership and Location form.

Figure: 10 TAC §80.100(b)(35): Statutory compliance with §1201.114(a) and §1201.113.

Figure: 10 TAC §80.100(b)(38): Statutory compliance with §1201.104(f) revised by HB 2238 and formatting corrections.

Figure: 10 TAC §80.100(b)(39): Statutory compliance with §1201.217(b) revised by HB 2238, which requires that notice be also given to any known intervening owners of liens or equitable interest.

Figure: 10 TAC §80.100(b)(40): Statutory compliance with §1201.217(b) and (f) revised by HB 2238.

Figure: 10 TAC §80.100(b)(42): Statutory compliance with §1201.103(d)(1) and §1201.113 revised by HB 2238.

Figure: 10 TAC §80.100(b)(43): Revised the title from Application for License Instruction Providers to Application for Continuing Education Providers.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Except for the above, there are no other proposed amendments expected to have material economic costs to persons/businesses that are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and compliance with the Standards Act and Federal Regulations.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address joe.garcia@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register.*

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments.

§80.3. Fees.

(a) (No change.)

(b) Installation Fees:

(1) (No change.)

(2) The reporting fee must be submitted to the Department with the completed Notice of Installation (Form T) no later than seven (7) days after which the installation is completed, but not later than three (3) days for [~~probationary~~] installers with a provisional license.

(3) (No change.)

(c) - (j) (No change.)

(k) Method of Payment.

(1) (No change.)

(2) All fees for available electronic transactions [~~license renewals~~] may also be paid by credit card or ACH, if submitted through Texas Online.

(l) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903461

Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.25

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments.

§80.25. Generic Standards for Multi-Section Connections Standards.

(a) - (h) (No change.)

(i) Drain, Waste and Vent System (DWV):

(1) - (2) (No change.)

(3) Water testing: At the time of installation the water system must be inspected and tested for leaks after completion at the site (the water heater must be disconnected when using an air-only test).

(4) Drainage system testing: At the time of installation the drainage system must be inspected and tested for leaks after completion at the site.

(j) (No change.)

(k) Fuel Gas Piping Systems:

(1) - (2) (No change.)

(3) The gas system must be inspected and tested for leaks after completion at the site.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903462
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.32, §80.33

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments.

§80.32. Retailers' Responsibilities and Requirements.

(a) (No change.)

(b) At the time of signing a contract for the sale or lease of a manufactured home, the retailer must disclose to the purchaser, a notice of the existence of a Dispute Resolution Program through HUD, either on a separate document from the sales contract or it may be incorporated clearly at the top of the sales contract. Disclosure of this requirement should be acknowledged by the consumer.

(c) [~~(b)~~] A retailer shall timely provide each consumer who acquires a manufactured home by sale, exchange, or lease purchase the applicable warranty or warranties specified in the Standards Act and any warranty regarding the home itself shall specify whether the warranty includes cosmetic items or not and, if it does include them, whether there are any limitations or special requirements, such as a walk-through punch lists, excluded items, or the like.

(d) [~~(c)~~] For each manufactured home taken into a retailer's inventory, a retailer shall maintain a copy of either a completed and timely submitted application for a statement of ownership and location to reflect the home as inventory or, once such a statement of ownership and location has been issued and received, a copy of that statement of ownership and location.

(e) [~~(d)~~] For each home altered or rebuilt from salvage a retailer shall retain the documentation required for a rebuilder.

(f) [~~(e)~~] A retailer must provide their company name, license number, contact information on any sales agreement, and proof of purchase or confirmation of sale.

(g) [~~(f)~~] If a retailer relies on a third party, such as a title company or closing attorney, to file with the Department the required forms necessary to enable the Department to issue a Statement of Ownership and Location to a consumer, the retailer must provide an instruction letter to that third party, advising them of their responsibilities to make such filings and the required timeframes therefore. This does not relieve the retailer from responsibility. The retailer must retain with their sale records a copy of that instruction letter and all documentation provided to such third party to enable them to make such filings. This optional form is available in Subchapter I of this chapter (relating to Forms).

(h) [~~(g)~~] On a new manufactured home and on any used manufactured home where the sale, exchange or lease-purchase includes installation, the retailer must specify in the applicable contract or an accompanying written disclosure the intended date by which installation will be complete and a designated person to contact for the current status as to the intended date for completion of installation. For new manufactured homes, the retailer is responsible for ensuring that a licensed installer warrants the proper installation of the home and performs the required site preparation.

(i) [~~(h)~~] If any goods or services being provided by a retailer in connection with the sale and/or installation of a manufactured home,

the retailer must disclose, in writing, the goods and/or services to be provided and a good faith estimate as to when they will be provided.

(j) [~~(i)~~] If any goods with a retail value of more than $250 are to be provided in connection with the sale of a manufactured home and they are not specified on the data plate for the home, the retailer must describe them in the retail installment contract, purchase memorandum, or other sale document in sufficient detail to enable a third party to provide them under the responsibility of the retailer's surety bond should the retailer fail to provide them as agreed.

(k) [~~(j)~~] A retailer accepting a deposit must give the consumer a written statement setting forth:

(1) the amount of such deposit;

(2) a statement of any requirements to obtain or limitations on any such refund; and

(3) the name and business address of the person receiving such deposit.

(l) [~~(k)~~] A retailer may not represent to a consumer that is purchasing a manufactured home with interim financing that the consumer will qualify for permanent financing if the retailer has any reason to believe that the consumer will not qualify for such permanent financing.

(m) [~~(l)~~] A retailer may not increase the advertised price at which a manufactured home is to be sold based on the consumer's decision to make the purchase with or without financing provided by or arranged through the retailer.

(n) [~~(m)~~] A retailer may not request or accept any document that is executed in blank or allow any alteration to a completed document without the consumer's initialing and dating such changes to indicate agreement to them. Where information is not available, a statement of that fact (e.g., TBD--to be determined, not available, N/A, not applicable, or the like) may be entered in the blank. A consumer must be provided with copies of all documents they execute.

(o) [~~(n)~~] A retailer may not knowingly accept or issue any check or other form of payment appearing on its face to be a bona fide payment but known not to represent good funds.

(p) [~~(o)~~] A retailer may not negotiate or offer a deposit refund of less than is required by the Act. However, a retailer may, by written agreement with the consumer, retain the amount of the deposit used to pay legitimate third party costs actually incurred, such as credit report fees or courier fees.

(q) [~~(p)~~] In order to comply with the provisions of §1201.107(d) of the Standards Act, a retailer or broker must:

(1) have a current, in effect surety bond issued in the most recent form promulgated by the Department; and

(2) the applicable sales agreement must identify the surety bond that applies to the transaction and contain the following statement: "The above-described surety bond applies to this transaction in the following manner: The bond is issued to the Texas Manufactured Homeowners' Recovery Trust Fund (the "Fund"), a fund described in the Texas Manufactured Housing Standards Act (Tex. Occ. Code, Chapter 1201) and administered by the Director. If the Fund makes a payment to a consumer, the Fund will seek to recover under the surety bond. The obligation of the Fund to compensate a consumer for damages subject to reimbursement by the Fund is independent of the Fund's right or ability to recover from the above-described surety bond, but recoveries on surety bonds are an important part of the Fund's ability to maintain sufficient assets to compensate consumers. There can be no assurance that the Fund will have sufficient assets to compensate a consumer for a covered claim. Assuming it has sufficient assets to compensate a consumer for a covered claim, the liability of the Fund is limited to actual damages, not to exceed $35,000."

(r) [~~(q)~~] A retailer shall maintain on a current basis a separate file for each salesperson sponsored by that retailer reflecting:

(1) that they are licensed in accordance with the Standards Act;

(2) the date of the initial licensing class that they attended and a copy of their certificate of completion;

(3) evidence of the successful completion of any required continuing education classes that they attended; and

(4) a copy of any written notice to the Department that sponsorship was terminated and the effective date thereof.

(s) [~~(r)~~] At each licensed location, including each branch location, a retailer shall display their current license for that location and the current license of each salesperson who works from that location.

(t) [~~(s)~~] At each licensed location, including each branch location, a retailer shall conspicuously display the Consumer Protection Information sign as set forth in Subchapter I of this chapter.

(u) [~~(t)~~] Auction of Manufactured Housing to Texas Consumers.

(1) A person selling more than one home to one or more consumers through an auction in a twelve (12) month period must be licensed as a retailer, each individual acting as their agent must be licensed as a salesperson, and each specific location at which an auction is held must be licensed and bonded in accordance with the Standards Act.

(2) Acting as an auctioneer may be subject to the Texas Auctioneer Act, Occupations Code, Chapter 1802.

(3) The retailer must notify this Department in writing at least thirty (30) calendar days prior to the auction with such notice to contain the date, time, and physical address and location of a proposed auction or, if they recur on a scheduled basis, of the schedule.

(v) [~~(u)~~] The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(w) [~~(v)~~] The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's home site.

§80.33. Installers' Responsibilities and Requirements.

(a) - (f) (No change.)

(g) For each installation completed, the contracting installer must complete a Notice of Installation and submit the original, signed form with the required fee to the Department no later than seven (7) days after which the installation is completed, but not later than three (3) days for [~~probationary~~] installers with a provisional license. If an installer submits multiple installation reports at one time, a single payment for the combined fees may be submitted.

(h) - (j) (No change.)

(k) Each installer shall maintain the following books and records for each installation:

(1) - (2) (No change.)

(3) if the used home is to be installed on a site that has evidence of ponding, run-off, or uncompacted soil, a signed form from

the consumer, acknowledging the condition and accepting the risks, such form to be as set forth in Subchapter I of this chapter (relating to Forms) and §1201.255 of the Standards Act;

(4) - (8) (No change.)

(l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903463
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER E. LICENSING

10 TAC §80.40, §80.41

The amended sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments.

§80.40. Security and Insurance Requirements.

(a) - (d) (No change.)

~~[(e) Each installer shall maintain public liability insurance coverage, including completed operations coverage in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence. A combined single limit of $300,000 will be considered to be in compliance with this section. If the applicant will be engaged in the transportation of manufactured housing incidental to the installation, the applicant must also have motor vehicle liability insurance coverage in an amount of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence, $100,000 property damage each occurrence. A combined single limit of $500,000 will be considered to be in compliance with this section. Cargo insurance on each home or transportable section of not less than $50,000 per towing motor vehicle is required.]~~

~~[(1) At the time of initial license and on renewal, a certificate of insurance must be filed with the Department by the insurance carrier or its authorized agent certifying the name of insurer, type of insurance and insurance limit per aggregate coverage and which provides for thirty (30) calendar days notice of cancellation. If the applicant does not provide proof of the required motor vehicle liability insurance and the cargo coverage, the applicant must sign an affidavit that the applicant will not engage in any transportation of manufactured housing. If the applicant transports only his/her own property, and furnishes the Department with an affidavit attesting to that fact, cargo coverage is not required.]~~

~~[(2) An installer, also licensed as a retailer, may satisfy the insurance requirements by filing a certificate of insurance which shows that the license holder has motor vehicle garage liability coverage including completed operations, and has dealer's physical damage (open lot) including transit insurance coverage in amounts not less than those set forth in subsection (e) of this section. If the retailer installer transports their own homes, they must show proof of collision coverage on their commercial physical damage (open lot) policy.]~~

~~[(3) If the required insurance coverage expires or is canceled, and proof of replacement coverage is not received prior to the expiration date or date of cancellation, the installer's license is automatically terminated until the licensee provides a new valid insurance.]~~

(e) ~~[(f)]~~ In order for the Board to direct the Director to stop accepting bonds issued by a surety for reasons outlined in §1201.105(c) of the Standards Act, the Department experiences significant problems if:

(1) the surety fails on three (3) or more occasions to make the required reimbursement payment within thirty (30) calendar days from the date of notice from the director that a consumer claim has been paid; or

(2) is more than sixty (60) calendar days late in making a required reimbursement payment.

(f) ~~[(g)]~~ If the director stops accepting bonds issued by a surety for reasons set forth in subsection (e) ~~[(f)]~~ of this section, all licensees who are bonded by the affected surety will be notified immediately so they can supply the Department with a new valid bond when they renew their license. If a licensee fails to supply the Department with a new valid bond when they renew their license, their license is automatically suspended until the licensee provides a new valid bond.

§80.41. License Requirements.

(a) General License Requirements. In order to apply to obtain a license, the promulgated form of application for such license must be fully completed and executed and submitted to the Department, accompanied by the required fee, required security, [~~evidence of any required insurance,~~] and all other required supporting documentation. The Department may request any reasonably related additional information or documentation to clarify or support any application.

(1) (No change.)

(2) Additional provisions applicable to installers.

(A) A provisional [~~probationary~~] installer's license shall become a full installer's license as outlined in §1201.104(f) of the Standards Act when the Department inspects a minimum of five (5) manufactured home installations and found not to have any identified installation violations.

(B) It is the responsibility of an installer who is still on a provisional [~~probationary~~] status to notify the Department of each installation performed promptly. As used in this section [~~Section~~], "promptly" means sufficiently early to enable the home to be inspected prior to any skirting being installed, in any event within three business days following the date of completion of the installation.

(C) It is the responsibility of the Department's field office to notify the Department's licensing section when a provisional [~~probationary~~] installer's license is eligible for upgrade to a full installer's license.

(b) - (c) (No change.)

(d) Continuing Education.

(1) (No change.)

(2) Acceptable evidence that the requirements of §1201.113(b) of the Standards Act have been satisfied by the license holder or their related person on record with the Department, would be a certificate, letter, or similar statement provided by the approved education provider indicating that the course was timely completed. Such evidence may be submitted by fax, mail, e-mail, or in person. [~~Attendance of a continuing education course in person is a requirement.~~]

(3) For license renewal, evidence of any required completion [~~attendance~~], with reference to license number, must be received by the Department before a license may be renewed.

(4) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses a party wishing to be considered for such approval must submit, for each course for which approval is sought, a letter application, accompanied by the nonrefundable processing fee, and the following:

(A) - (D) (No change.)

(E) If completion of [~~attendance at~~] the course is limited to any particular group, a description of the limitation;

(F) - (G) (No change.)

(5) (No change.)

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903464
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER H. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §§80.90, 80.92, 80.94

The amended and new sections are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments and new section.

§80.90. Issuance of Statements of Ownership and Location.

(a) - (b) (No change.)

(c) Corrections to Statements of Ownership and Location.

(1) (No change.)

(2) If a correction is requested because of an error made by a party other than the Department, the correction will not be made until the Department receives the following:

(A) A complete corrected application for Statement of Ownership and Location, and

(B) Any necessary supporting documentation.[~~, and~~]

[~~(C) The required fee, which can be reduced or waived by the director for good cause.~~]

(d) - (h) (No change.)

§80.92. Inventory Finance Liens.

(a) (No change.)

(b) A separate form must be filed for each licensed sales location and must include a summary of homes by label or serial number, that are secured with the form.

§80.94. Report to County Tax Assessor-Collectors and County Appraisal Districts.

In order to comply with §1201.220 of the Standards Act, which requires the Department to provide a monthly report to each tax assessor-collector and county appraisal district in Texas, the Department will provide the required information by hardcopy or electronically, when possible. Section 1201.009 of the Standards Act, allows the Department, if feasible, to perform any action under this chapter by electronic means.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903465
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

SUBCHAPTER I. FORMS

10 TAC §80.100

The amended section is proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014 and §2306.6020, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed amendments.

§80.100. List of Forms.

(a) The following list is in numerical order with the forms located in subsection (b) of this section.

(1) - (29) (No change.)

(30) Notice of [~~Lien for~~] Tax Lien/Release Form.

(31) HUD Disclosure to Consumer Regarding Dispute Resolution [~~Notice of Lien to Perfect a Lien (Other than Tax Lien) Form~~].

(32) - (37) (No change.)

(38) [~~Probationary~~] Notice of Installation (Form T) for Provisional Installer's License.

(39) - (42) (No change.)

(43) Application for Continuing Education [~~License Instruction~~] Provider.

(44) - (46) (No change.)

(b) Forms.

(1) Application for Manufacturer's License.
Figure: 10 TAC §80.100(b)(1)

(2) Application for Retailer, Broker, Installer and/or Rebuilder's License.
Figure: 10 TAC §80.100(b)(2)

(3) Application for Retailer with Branch Locations License.
Figure: 10 TAC §80.100(b)(3)

(4) Application for Salesperson's License.
Figure: 10 TAC §80.100(b)(4)

(5) - (6) (No change.)

(7) Manufacturer's Certificate of Origin (MCO).
Figure: 10 TAC §80.100(b)(7)

(8) - (10) (No change.)

(11) Consumer Notice of Licensed and Bonded Location.
Figure: 10 TAC §80.100(b)(11)

(12) - (13) (No change.)

(14) Texas Inventory Finance Security Form.
Figure: 10 TAC §80.100(b)(14)

(15) (No change.)

(16) Notice of Installation (Form T).
Figure: 10 TAC §80.100(b)(16)

(17) Installation Checklist.
Figure: 10 TAC §80.100(b)(17)

(18) (No change.)

(19) Application for Statement of Ownership and Location.
Figure: 10 TAC §80.100(b)(19)

(20) - (23) (No change.)

(24) Addendum to Application for SOL.
Figure: 10 TAC §80.100(b)(24)

(25) - (26) (No change.)

(27) Taxing Entity Application for Texas Seal (Form S).
Figure: 10 TAC §80.100(b)(27)

(28) (No change.)

(29) Instructions to Third Party Closer.
Figure: 10 TAC §80.100(b)(29)

(30) Notice of [~~Lien for~~] Tax Lien/Release Form.
Figure: 10 TAC §80.100(b)(30)

(31) HUD Disclosure to Consumer Regarding Dispute Resolution [~~Notice of Lien to Perfect a Lien (Other than Tax Lien) Form~~].
Figure: 10 TAC §80.100(b)(31)
[~~Figure: 10 TAC §80.100(b)(31)~~]

(32) - (34) (No change.)

(35) Application for License Renewal (other than a salesperson).
Figure: 10 TAC §80.100(b)(35)

(36) - (37) (No change.)

(38) [~~Probationary~~] Notice of Installation (Form T) for Provisional Installer's License.
Figure: 10 TAC §80.100(b)(38)

(39) Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home.
Figure: 10 TAC §80.100(b)(39)

(40) Affidavit of Fact for Abandonment.
Figure: 10 TAC §80.100(b)(40)

(41) (No change.)

(42) Application for Salesperson's License Renewal.
Figure: 10 TAC §80.100(b)(42)

(43) Application for Continuing Education [~~License Instruction~~] Provider.
Figure: 10 TAC §80.100(b)(43)

(44) - (46) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903466
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-2206

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.122, §21.129

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.122 and §21.129, concerning the Texas B-On-Time Loan Program.

Specifically, the proposed amendments to §21.122 would add definitions for "Degree in Architecture," "Degree in Engineering," and "Texas CIP Codes." Other definitions are renumbered accordingly. Texas Education Code, §56.462, specifically states

that a student graduating with a "degree in architecture or engineering" is allowed up to five years for "on-time" graduation. Some students and institutional staff have interpreted this language broadly to apply to any degree conferred within the university's College of Architecture or College of Engineering. For example, Texas A&M University offers degrees in Visualization and Urban and Regional Sciences within the College of Architecture, but it does not offer an undergraduate degree in Architecture. The inclusion of these definitions will clarify for students the degrees for which the statute allows five years for graduation. They will also guide institutions in completing forms for verification of student eligibility for loan forgiveness. Section 21.129 pertains to the requirements for forgiveness of loans. The proposed amendments would require institutions to certify to the Board that a given program requires more than four years for completion, if applicable. The number of years required to complete a program, as certified by the institution, determines whether or not a student has graduated "on time."

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Weaver has also determined that each year of the first five years the amendments are in effect, the public benefit anticipated as a result of this change will be that students receiving B-On-Time loans and institutions will have a clear understanding of what is considered a "degree in architecture" or a "degree in engineering," avoiding the misunderstanding that any degree offered within a university's College of Architecture or College of Engineering meets the statutory intent. This will make it easier for participants to understand the loan forgiveness requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the Texas B-On-Time Loan Program.

The amendments affect Texas Education Code, §§56.451 - 56.465.

§21.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Degree in Architecture--the completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 04.0201 of the Texas CIP Codes.

(4) Degree in Engineering--the completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 14 of the Texas CIP Codes.

(5) [~~(3)~~] Default--the failure of a borrower to make loan installment payments for a total of 180 days

(6) [~~(4)~~] Recommended or Distinguished Achievement Program-Advanced High School Program--the high school curriculum recommended under §28.025(a) of the Texas Education Code

(7) [~~(5)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title, (relating to Initial Eligibility for Loans).

(8) Texas CIP Codes--Classification codes for degree programs, agreed upon by institutions and approved by the Board, based on curricular content belonging to categories within the federal Classification of Instructional Programs (CIP) published by the National Center for Educational Statistics. Texas CIP Codes are available at http://www.thecb.state.tx.us/apps/ProgramInventory/.

§21.129. Forgiveness of Loans.

A Texas B-On-Time loan shall be forgiven if the student is awarded an undergraduate degree or certificate from an eligible institution, and the student either:

(1) graduated with a B average, or the equivalent of a cumulative grade point average of at least 3.0 on a four-point scale, and received:

(A) (No change.)

(B) a baccalaureate degree within five calendar years after the date the student initially enrolled in an eligible institution if the institution has reported or will report that the student graduated with a degree [~~is~~] in architecture, engineering, or any other program that the institution certifies to the Board is a program that requires [~~determined by the Board to require~~] more than four years to complete;

(C) - (D) (No change.)

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903443
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251 - 21.263

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.251 - 21.263, concerning

the Physician Education Loan Repayment Program. Specifically, these sections are proposed for repeal in order to reorganize and integrate into the sections the new statutory provisions mandated by House Bill 2154, 81st Texas Legislature. New sections for the Physician Education Loan Repayment Program are being proposed simultaneously with this repeal.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications to state or local government as a result of repealing the sections.

Mr. Weaver has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be that the repealed sections will be replaced with a better organized set of rules for the Physician Education Loan Repayment Program, making it easier for participants and other stakeholders to understand the program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter J.

The repeal affects Texas Education Code, §§61.531 - 61.540, as amended.

§21.251. Authority and Purpose.
§21.252. Administration.
§21.253. Dissemination of Information.
§21.254. Definitions.
§21.255. Special Limitations.
§21.256. Priorities of Application Acceptance.
§21.257. State Recommended Health Professional Shortage Area.
§21.258. Eligible Education Loan.
§21.259. Eligible Lender or Holder.
§21.260. Repayment of Education Loans.
§21.261. State-Funded Portion for Post-Residency Practice.
§21.262. Eligibility for State Loan Repayment Program (SLRP) Matching Federal Loan Repayments.
§21.263. Eligibility for Family Practice Faculty Participation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903447
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.251 - 21.262

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.251 - 21.262, concerning the Physician Education Loan Repayment Program. Specifically, the new sections replace repealed §§21.251 - 21.263 and incorporate amendments to the Texas Education Code, §§61.532 - 61.540, as mandated by House Bill 2154, 81st Texas Legislature, including changes to eligibility requirements, changes to how loan repayments may be made, removal of language referring to an inactive portion of the program for family practice residents, and clarification of repayment assistance amounts.

Mr. Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the sections are in effect, the fiscal implications to state or local government are that the costs of administering these rules will be paid from continued funding from General Revenue and tuition set asides in addition to new revenue to be deposited into the Physician Education Loan Repayment Program account as a result of changes to the tax code for smokeless tobacco.

Mr. Weaver has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be program requirements that are more logically organized and easier to understand. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment except that local employers in health-related fields may benefit from the participation of new physicians in the program.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt rules for the Physician Education Loan Repayment Program.

The new sections affect the Texas Education Code, §§61.532 - 61.540.

§21.251. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter J, Repayment of Certain Physician Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.531 - 61.540.

(b) Purpose. The purpose of the Physician Education Loan Repayment Program is to encourage qualified physicians to practice medicine in a health professional shortage area designated by the Texas Department of State Health Services, and provide health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62.

§21.252. Administration.

The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Physician Education Loan Repayment Program and may enter into a memorandum of understanding with the

Texas Department of State Health Services to perform specified duties in administering the program.

§21.253. Dissemination of Information.

The Texas Higher Education Coordinating Board shall disseminate information about the Physician Education Loan Repayment program to health-related institutions of higher education, appropriate state agencies, and any interested professional associations.

§21.254. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(3) Commissioner--The commissioner of higher education, the chief executive officer of the Board.

(4) Federally Qualified Health Center--Any entity in Texas defined under 42 USC §1396d(l)(2)(B).

(5) DSHS--The Texas Department of State Health Services.

(6) Full-time Service--An average of at least 32.5 hours of direct patient care per week at the HPSA practice site.

(7) HPSA--A Health Professional Shortage Area, which is a part of a county or population designated by the United States Department of Health and Human Services (HHS) on the basis of meeting the criteria identified in §215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); §332 of the Public Health Service Act, 90 Stat. 2270 - 2272 (42 U.S.C. 254e). Texas HPSAs are recommended for designation by HHS based on analysis of data by DSHS.

(8) Medicaid--The medical assistance program authorized by Chapter 32, Texas Human Resources Code.

(9) Non-profit facility--A healthcare facility identified as a 501(c)(3) by the Internal Revenue Service.

(10) Primary Care Specialty--Family medicine, general practice, obstetrics/gynecology, general internal medicine, general pediatrics, psychiatry, or geriatrics.

(11) Rural HPSA--A HPSA-designated county or a HPSA-designated area or population in a county of less than 50,000 people.

(12) Service Period--A period of 12 consecutive months qualifying a physician for loan repayment.

§21.255. Loan Repayment Assistance Under Former Law; Saving Provision.

Physicians qualifying for loan repayment assistance on the basis of applications submitted to the Board before September 1, 2009, may receive loan repayment assistance pursuant to §§61.531 - 61.539 of the Texas Education Code, the statute in effect prior to the passage of House Bill 2154, 81st Texas Legislature.

§21.256. Eligibility.

(a) To be eligible for the Board to reserve loan repayment funds, a physician must:

(1) ensure that the Board or its designee has received the application by the stated deadline;

(2) at the time of application, hold an unrestricted license to practice medicine under Title 3, Subtitle B, Texas Occupations Code;

(3) not be currently fulfilling another obligation to provide medical services in exchange for loan repayment or any other benefit or incentive; and

(4) agree to provide four consecutive years of service in a HPSA.

(b) To be eligible to receive loan repayment assistance, a physician must:

(1) have completed one, two, three, or four years of consecutive practice in a HPSA;

(2) during the service period, have provided direct patient care to:

(A) Medicaid enrollees, and

(B) CHIP enrollees;

(3) follow a policy of providing health care to all who present for care, regardless of ability to pay or lack of insurance; and

(4) if qualifying on the basis of a practice located in a HPSA designated for its low-income population, must accept payments on a sliding fee scale.

§21.257. Application Ranking Criteria.

If there are not sufficient funds to award loan repayment assistance for all eligible physicians whose applications are received by the stated deadline, applications shall be ranked according to the following criteria, in priority order:

(1) renewal applications;

(2) satisfactorily earned and maintained certification from an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in one of the following specialties:

(A) primary care specialties, or

(B) other specialties, if the DSHS determines that there is a critical need for the applicant's specialty in the HPSA where the practice is located.

(3) HPSA score for practice location;

(4) practice located in a rural HPSA; and

(5) practice in a Federally Qualified Health Center.

§21.258. Eligible Education Loan.

To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate, graduate, or medical education at an accredited institution in the United States;

(2) not have been made during residency;

(3) not be in default at the time of the physician's application;

(4) not have an existing service obligation;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program;

(6) if the loan was consolidated with other loans, the physician must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the physician's undergraduate, graduate, or medical education at an accredited institution in the United States.

§21.259. Amount of Repayment Assistance.

(a) A physician whose total student loan indebtedness is at least $160,000 may receive repayment assistance based on full-time service for the following amounts:

(1) for the first year of service, $25,000;

(2) for the second year of service, $35,000;

(3) for the third year of service, $45,000;

(4) for the fourth year of service, $55,000.

(b) If a physician's total student loan indebtedness is less than $160,000, the annual loan repayment amounts based on full-time service will be the amounts required to repay the indebtedness over a period of four years, with annual increases that are proportional to the annual increases for physicians whose student loan indebtedness is at least $160,000.

(c) The total amount of repayment assistance to a physician may not exceed $160,000 over a period of no more than four years.

(d) A physician may receive prorated loan repayment assistance based on the percentage of full-time service provided for each year of service.

§21.260. Limitations.

(a) The total amount of repayment assistance to a physician may not exceed $160,000 over a period of no more than four years.

(b) Except under circumstances determined by the Board and DSHS to constitute good cause, failure to meet the program requirements will result in non-payment for that year and removal from the program. Additionally, providers who do not meet the requirements will be ineligible to apply for other loan repayment programs in Texas.

§21.261. Disbursement of Loan Repayment Assistance.

(a) The annual loan repayment amount may be disbursed in the form of:

(1) one or multiple state warrants co-payable to the physician and the holder(s) of the loan(s); or

(2) one or multiple state warrants or electronic payments delivered directly to the holder(s) on the physician's behalf.

(b) The Board shall follow Internal Revenue Service requirements for reporting of loan repayment assistance to physicians during each calendar year.

§21.262. Reporting of Retention Rates.

Prior to September 1 of every even numbered year, the Board shall report to the Legislative Budget Board and the Governor the results of a survey of physicians who have completed a Physician Education Loan Repayment Program contract to practice in a HPSA to determine rates of retention in those shortage areas and counties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903446
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER R. DENTAL EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §21.566

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §21.566, concerning the Dental Education Loan Repayment Program. Specifically, the amendment to §21.566(3) would remove the reference to the annual loan repayment amount of $10,000. The reference to a specific amount contradicts the rule within the same section authorizing the commissioner of higher education to determine award amounts providing incentives for continuous service and service in the most underserved areas. This amendment would also bring the annual loan repayment amount for this program in line with that of the Physician Education Loan Repayment Program. The amendment to §21.566(6) clarifies that it refers to the commissioner of higher education.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of this change will be improved effectiveness of the Dental Education Loan Repayment Program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.908, which provides the Coordinating Board with the authority to adopt any rules necessary for the administration of the Dental Education Loan Repayment Program.

The amendments affect Texas Education Code, §§61.901 - 61.910.

§21.566. Repayment of Education Loans.

Eligible education loans of qualified dentists shall be repaid under the following conditions:

(1) - (2) (No change.)

(3) the maximum [~~$10,000~~] annual repayment amount shall be based on full-time eligible services;

(4) - (5) (No change.)

(6) the commissioner of higher education may determine award amounts providing incentives for continuous service and service in the most underserved areas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903444
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER PP. PROVISIONS FOR UNIFORM STANDARDS FOR PUBLICATION OF COST OF ATTENDANCE INFORMATION

19 TAC §§21.2220 - 21.2222

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.2220 - 21.2222, concerning Provisions for Uniform Standards for Publication of Cost of Attendance Information. Specifically, the new sections implement House Bill 2504, 81st Texas Legislature, which amended the Texas Education Code by adding §61.0777. The sections are intended to ensure that information regarding the cost of attendance at institutions of higher education is available to the public in a manner that is consumer-friendly and readily understandable to prospective students and their families. Each institution of higher education will be required to make available to the public on the institution's Internet website estimates of the cost of attendance for full-time students. In addition, institutions will provide the Coordinating Board with the information necessary for Coordinating Board Staff to calculate the net cost of attendance for a full-time entering first-year student.

Ms. Lois Hollis, Special Assistant to the Deputy Commissioner, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be better consumer information on the actual cost of higher education in Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.0777, which provides the Coordinating Board with the authority to prescribe uniform standards for the implementation of these sections.

The new sections affect the Texas Education Code, §61.0777.

§21.2220. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter C, §61.0777, Uniform Standards for Publication of Cost of Attendance Information.

(b) Purpose. The purpose is to prescribe uniform standards intended to ensure that information regarding the cost of attendance at institutions of higher education is available to the public in a manner that is consumer-friendly and readily understandable to prospective students and their families. Each institution of higher education shall make available to the public on the institution's Internet website estimates of the cost of attendance for full-time students.

§21.2221. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Board Staff--The staff of the Texas Higher Education Coordinating Board.

(3) Commissioner--The Commissioner of Higher Education; as used in this subchapter, "Commissioner" means the agency acting through its executive, and his or her designees, staff, or agents.

(4) First-Time Entering Full-Time Student--A student who enrolls for the first time at an institution of higher education and enrolls in 15 credit hours per semester for two consecutive semesters (not including summer sessions).

(5) Full-Time Enrollment--Enrollment of 30 semester credit hours per year for undergraduate students and 18 semester credit hours per year for graduate students.

(6) Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(6).

(7) Net Cost of Attendance--The total cost of attendance less the student's estimated family contribution and less the estimated grant aid. The net cost may be a range.

(8) Total Cost of Attendance--Expenses incurred by a typical student in attending a particular college. It includes tuition, fees, books, and supplies, room and board, transportation, and other personal expenses.

§21.2222. Internet Access to Cost Information.

(a) Each institution of higher education that offers an undergraduate degree or certificate program shall prominently display on the institution's Internet website the cost of attendance by an entering full-time, first-year student in accordance with the uniform standards prescribed by the Commissioner.

(b) The institution shall conform to the uniform standards of cost information in any electronic or printed materials intended to provide information regarding the cost of attendance to prospective undergraduate students.

(c) The uniform standards shall also be considered by institutions when providing information regarding the cost of attendance by nonresident students, graduate students, or students enrolled in professional programs.

(d) Institutions shall provide the Board, upon request, any information necessary for the Board Staff to calculate the net cost of attendance for a full-time entering first-year student.

(e) Institutions of higher education shall comply with the standards and requirements not later than April 1, 2010.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903445

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 29, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3003

The Texas Education Agency (TEA) proposes an amendment to §101.3003, concerning assessment requirements for graduation. The section establishes graduation testing requirements for certain students. The proposed amendment would substitute a more current state assessment for testers previously covered by the Texas Assessment of Academic Skills (TAAS). House Bill (HB) 3, 81st Texas Legislature, 2009, prohibits districts from administering exit level TAAS and requires the commissioner of education to specify an alternate assessment for testers who previously needed to pass exit level TAAS to receive a Texas high school diploma.

In accordance with HB 3, 81st Texas Legislature, 2009, TEC, §39.025(c-1), eliminates the use of the TAAS assessment instrument. A school district may administer an alternate assessment instrument for testers who fall under TAAS graduation requirements. A student eligible to take the alternate assessment must not be tested in a subject that was not assessed by the exit level TAAS. The commissioner of education must determine the performance level considered satisfactory on the alternate assessment instrument and provide the information to school districts to administer these assessments.

The proposed amendment to 19 TAC §101.3003 would adopt appropriate subject area exit level Texas Assessment of Knowledge and Skills (TAKS) assessments to be used in place of TAAS beginning in October 2009 and specify that passing standards will be set and posted to the TEA website. Currently there is not sufficient data to set a TAAS-TAKS link and the data will not be available until after the affected testers take the appropriate exit level TAKS tests in October 2009. Once established by the commissioner of education, the applicable performance standards will be adopted in rule as part of 19 TAC §101.3003.

The proposed amendment also would address testing requirements that apply to testers who originally were eligible to graduate under Texas Educational Assessment of Minimum Skills (TEAMS) requirements and subsequently have been held to TAAS performance standards linked to exit level TEAMS performance standards. As stated earlier, applicable passing standards will be established by the commissioner of education and posted to the TEA website once sufficient data are available. The performance standards linked to the TEAMS will be adopted in rule as part of 19 TAC §101.3003.

The proposed amendment would also remove reference to specific end-of-course examinations taken in spring 2002 or earlier since the provision is no longer applicable.

The proposed rule action would place the appropriate alternate assessment for affected testers in the *Texas Administrative Code.* Performance standards for these students, once determined, will be posted to the TEA website and reports will be issued to appropriate campuses and districts after determining performance standards. The proposed amendment would have no locally maintained paperwork requirements.

Criss Cloudt, Associate Commissioner for Assessment, Accountability, and Data Quality, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state and local government as a result of enforcing or administering the amendment. The proposed amendment would result in an economic benefit to the state. Cost savings to the TEA will be approximately $300,000 for fiscal year 2010 and $800,000 per year for fiscal years 2011-2014. Savings are due to the fact that exit level TAAS will no longer be developed, maintained, shipped, scored, or reported. All current TAAS testers will be taking the appropriate TAKS subject area exit level assessment. Cost savings are less in fiscal year 2010 because some TAAS expenses were incurred for school year 2009-2010 before HB 3 took effect.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to inform the public of the new testing requirements for testers currently falling under TAAS exit level assessment requirements by including this provision in the *Texas Administrative Code.* There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins August 21, 2009, and ends September 21, 2009. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463- 0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2009.

The amendment is proposed under the Texas Education Code, §39.025(c-1), which requires the commissioner to designate an alternate assessment instrument to be administered to eligible students in lieu of an assessment instrument administered under the TEC, §39.025, as it existed before September 1, 1999.

The amendment implements the Texas Education Code, §39.025(c-1).

§101.3003. Graduation Requirements.

(a) Students [~~Notwithstanding §101.7 of this title (relating to Testing Requirements for Graduation),~~ students] who were enrolled in Grade 8 or lower on January 1, 2001, and who did not complete all coursework required to graduate by September 1, 2004, must fulfill testing requirements for graduation with the exit level Texas Assessment of Knowledge and Skills (TAKS) tests, as required by the Texas Education Code, §39.023(c), as that section existed before amendment by Senate Bill 1031, 80th Texas Legislature, 2007 [~~specified in Texas~~

~~Education Code, §39.023(c)~~]. For purposes of this section, coursework necessary to graduate means all of the coursework required under the student's graduation plan.

(b) With the exception of students who meet the criteria described in subsection (c) of this section, students [~~Students~~] who were enrolled as follows shall fulfill testing requirements for graduation with the exit level TAKS under applicable performance standards established by the commissioner of education and published on the Texas Education Agency (TEA) website, in lieu of the exit level Texas Assessment of Academic Skills (TAAS):

(1) in Grade 9 or higher on January 1, 2001, regardless of when they are scheduled to graduate; or

(2) in Grade 8 or lower on January 1, 2001, if they were on an accelerated track and fulfilled all coursework necessary to graduate by September 1, 2004.

(c) A student who entered Grade 11 in the 1989-1990 school year or an earlier school year shall fulfill testing requirements for graduation with the exit level TAKS under an applicable performance standard established by the commissioner of education that corresponds to the performance standard in effect for the exit level Texas Educational Assessment of Minimum Skills (TEAMS) when the student was first eligible to take the exit level TEAMS. Performance standards that apply to TEAMS students will be published on the TEA website.

(d) A student fulfilling testing requirements under subsection (b) of this section will be required to take only those sections of the exit level TAKS that correspond to the subject areas formerly assessed by the exit level TAAS (reading, writing, and mathematics) for which the student has not yet met the passing standard.

(1) If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS English language arts (ELA) test.

(2) If a student has not yet met the passing standard on TAAS writing, the student will be administered only the writing prompt and the revising and editing multiple-choice items from the TAKS ELA test.

(e) A student fulfilling testing requirements under subsection (c) of this section will be required to take only those sections of the exit level TAKS that correspond to the subject areas formerly assessed by the exit level TEAMS (reading and mathematics) for which the student has not yet met the passing standard. If a student has not yet met the passing standard on TAAS reading, the student will be administered only the reading multiple-choice items from the TAKS ELA test.

(f) [~~(c)~~] Notwithstanding any of these subsections, students who pass all of the required exit level TAKS tests have fulfilled their testing requirements for graduation.

[~~(d) Students who passed the Algebra I, English II, and either Biology or U.S. History end-of-course exams by spring 2002 have fulfilled their testing requirements for graduation, regardless of their enrolled grade level on January 1, 2001.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903427

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance proposes amendments to §9.1 and §9.401, concerning the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and to the *Texas Title Insurance Statistical Plan* (Statistical Plan). The proposed amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and Statistical Plan. The proposed amendments to the Basic Manual and Statistical Plan, which the proposed amended sections will adopt by reference, were considered at the rulemaking phase of the 2008 Texas Title Insurance Biennial Public Hearing held on October 2, 2008, Docket Number 2690. The rulemaking phase of the hearing was conducted pursuant to the Insurance Code §2703.205. At the close of the October 2 hearing, the Commissioner directed that the record be held open until October 31, 2008, in order to allow additional written comments to be submitted for all of the agenda items. In accordance with the Insurance Code §2703.205(d), the ratemaking phase of the hearing was referred to the State Office of Administrative Hearings. This proposal is necessary to adopt new rules and forms and modify or replace currently existing rules and forms in the Basic Manual and Statistical Plan to facilitate the administration and regulation of title insurance and to clarify or standardize the rules and forms regulating the business of title insurance in the State of Texas.

The proposed amendments to the Basic Manual and Statistical Plan are identified by the item number used in the October 2 hearing. The proposal consists of 51 items. Publication of this proposal is necessary to incorporate the items proposed for approval into the Basic Manual and Statistical Plan. Items proposed for approval are detailed below along with a brief explanation of any substantive changes to the filings made subsequent to the October 2 hearing. The Department has also made changes to the filings to correct statutory references, typographical errors, and formatting errors. Items 2008-29, 2008-34, 2008-35, 2008-36, and 2008-45 were withdrawn from consideration during the rulemaking phase of the hearing upon the respective request of the entities that originally filed the items for consideration.

The following items are proposed for approval:

Item 2008-1 - Submission to amend the Residential Real Property Affidavit (Form T-47) to remove a duplicate reference to the title insurance company in paragraph 6 of the form.

Item 2008-2 - Submission to amend Procedural Rule P-36 to allow for the deletion of the arbitration provision on Schedule A of the Loan Policy or the Owner's Policy and to amend outmoded references to the Mortgagee and Owner Policy forms.

Item 2008-3 - Submission to amend Procedural Rule P-21 to conform the language of the rule with the language of the form by amending outmoded references relating to the Mortgagee and Owner Policy forms and to amend an outmoded reference to the State Board of Insurance.

Item 2008-4 - Submission to amend Procedural Rule P-9.b(8) to conform the language of the rule with the proposed Future Advance/Revolving Credit Form (T-35) and to delete the requirement that the Loan Policy show by endorsement that the lien being insured secures a revolving credit type of indebtedness.

Item 2008-5 - Submission to amend Procedural Rule P-9.b(6) to conform the language of the rule with the language of the Variable Rate Mortgage Endorsement (T-33) and the Variable Rate Mortgage-Negative Amortization Endorsement (T-33.1).

Item 2008-6 - Submission to adopt a new form to provide for a Limited Coverage Residential Chain of Title Policy (T-___).

Item 2008-7 - Submission to adopt new Procedural Rule (P-___) relating to the Limited Coverage Residential Chain of Title Policy (T-___).

Item 2008-8 - Submission to amend the Assignment of Rents/Leases Endorsement (T-27) to correct typos.

Item 2008-9 - Submission to amend the Texas Residential Owner Policy of Title Insurance - One-To-Four Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13) to conform with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) by changing the term "Owner" to "Owner's" and changing the term "Mortgagee" to "Loan."

Item 2008-10 - Submission to amend Procedural Rule P-7 to change the language in paragraphs B and C to conform with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) and the proposed changes to the Texas Residential Owner Policy of Title Insurance - One-To-Four Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13).

Item 2008-11 - Submission to amend Schedule B of the Loan Policy (T-2) to correct a typo.

Item 2008-12 - Submission to amend Schedule A of the Loan Policy (T-2) to remove the Tax Deletion Endorsement (T-30) from the list of optional endorsements on Schedule A and to remove language from Schedule A regarding deleted provisions from affected endorsements, which will require such deletions to be included as a special exception on Schedule B of the commitment.

Item 2008-13 - Submission to amend the Deletion of Arbitration Provision of the Commitment for Title Insurance (T-7) to increase the threshold amount for arbitral matters to $2 million in conformity with Procedural Rule P-36.

Item 2008-14 - Submission to amend Procedural Rule P-17 to allow a pass-through to consumers of electronic filing fees in accordance with HB 3073, as enacted by the 81st Legislature, Regular Session, effective January 1, 2010.

Item 2008-15 - Submission to amend Specific Areas and Procedures 5 of the *Minimum Standards* to allow a pass-through to consumers of tax search service fees and certain notary fees in accordance with HB 3073, as enacted by the 81st Legislature, Regular Session, effective January 1, 2010.

Item 2008-16 - Submission to amend the Commitment for Title Insurance (Form T-7) to conform the language of the form with the changed name of the policies referenced therein.

Item 2008-17 - Amended submission to amend Procedural Rule P-18 to require that a copy of the Commitment for Title Insurance (T-7) on an Owner's Policy be delivered to the proposed insured *as soon as practicable, but in no event later* than 5 business days prior to closing the transaction.

Item 2008-18 - Submission to amend Procedural Rule P-21 to remove language from Schedule D of the commitment for Title Insurance (T-7) regarding optional advanced disclosure of settlement charges and optional advanced issuance of a Commitment for Title Insurance in conformity with the proposed amendment to Procedural Rule 18.

Item 2008-19 - Submission to amend the Owner's Policy of Title Insurance (T-1) to remove indemnity language from the form in conformity with the 2006 American Land Title Association Owner's Policy.

Item 2008-20 - Submission to amend the Loan Policy of Title Insurance (T-2) to remove indemnity language from the form in conformity with the 2006 American Land Title Association Loan Policy.

Item 2008-21 - Amended submission to adopt new form (T-24.1) titled Non-Imputation Endorsement (Mezzanine Financing) to allow non-imputation coverage provided in paragraph 4 of the Owner's Policy to be assigned by the Insured to a Mezzanine Lender.

Item 2008-22 - Amended submission to adopt New Procedural Rule (P-__) titled *Issuance of Insured Closing Letters* to prohibit the issuance of Insured Closing Letter by attorneys operating pursuant to Procedural Rule P-22.

Item 2008-23 - Amended submission to adopt New Procedural Rule (P-__) titled, *Cancellation Fees; Fees for Services Rendered,* to define and prohibit cancellation fees and to otherwise allow fees for furnishing title evidence or furnishing title evidence and examination.

Item 2008-24 - Submission to amend the Insured Closing Service form (T-50) to substantially conform to the American Land Title Association Standard Closing Protection Letter except that it is proposed to maintain the current two year coverage period.

Item 2008-25 - Amended submission to amend the Co-Insurance Endorsement (T-48) to substantially conform to the American Land Title Association Standard Co-Insurance - Single Policy Endorsement.

Item 2008-26 - Submission to rescind the Last Dollar Endorsement (T-15) in its entirety.

Item 2008-27 - Submission to amend Procedural Rule P-9 to rescind the procedure for issuance of the Last Dollar Endorsement (T-15), which has also been proposed for rescission.

Item 2008-28 - Submission to amend P-55 to provide that the proposed Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) be issued in accordance with the same procedural provisions currently set forth by the rule for the Non-Imputation Endorsement (T-24).

Item 2008-30 - Amended submission to amend Administrative Rule L-1 to provide that a Title Insurance Company may cancel an agent's license for cause without giving the required advance notice of 30 days. The Department has modified the notice pro-

visions to add a new requirement to specify that if the company is the sole underwriter at the time of cancellation then the company must submit an orderly plan for the winding down of the title agent's operations that is in compliance with Administrative Rule D-1.

Item 2008-31 - Amended submission to amend the Future Advance/Revolving Credit Endorsement (T-35) to substantially conform the language of the endorsement to the American Land Title Association Future Advance Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-32 - Amended submission to amend the Leasehold Loan Policy Endorsement (T-5) to conform the language of the endorsement to the American Land Title Association Leasehold Loan Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-33 - Amended submission to amend the Leasehold Owner's Policy Endorsement (T-4) to conform the language of the endorsement to the American Land Title Association Leasehold Owner's Endorsement and to conform the language of the endorsement to the Owner's Policy (T-1).

Item 2008-37 - Amended submission to amend Procedural Rule P-54, titled *Access Endorsement,* to authorize issuance of the Access Endorsement (T-23) and to remove redundant language.

Item 2008-38 - Amended submission to amend Procedural Rule P-56 pertaining to (T-25) Contiguity Endorsement to include new requirements for new Contiguity Endorsement (T-25.1) that insures against loss or damage sustained by reason of the presence of any gaps, strips, or gores lying between contiguous parcels of insured lands and does not require the contiguous boundary lines of the various parcels of land to be specifically identified. The Department has amended new subsection D. by adding the clarifying language "non-residential " in two places to ensure that it is clear that the new Contiguity Endorsement (T-25.1) would only apply to non-residential property.

Item 2008-39 - Submission to adopt a New Contiguity Endorsement (T-25.1) to insure against loss or damage sustained by reason of the presence of any gaps, strips, or gores lying between contiguous parcels of insured lands and that does not require the contiguous boundary lines of the various parcels of land to be specifically identified.

Item 2008-40 - Amended submission to amend Procedural Rule P- 20 Amendment of Standard Exception in Mortgagee Policy or Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes to organize procedural rules regarding the standard tax exception and Bulletin 153 into one rule. This submission provides guidance to the title industry regarding current year and rollback taxes and it merges Procedural Rule 29, titled Amendment of Standard Exception in Mortgagee Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes Not Yet Due and Payable to make it a part of Procedural Rule P-20 subsection C.

Item 2008-41 - Submission to amend the Title Insurance Agent (L-1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-42 - Submission to amend the Audit and Review of the Agent/Direct Operations Escrow and Trust Accounts (G.2) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-43 - Submission to amend the Policy Guaranty Fee Remittance (T-G1) form in Section V of the Basic Manual to update the policy guaranty fee amount shown on the remittance form to reflect the correct amount due for each policy.

Item 2008-44 - Amended submission to amend the Requirements for Ceasing Operation by Agents and Direct Operations (D-1) administrative rule in Section VI of the Basic Manual to clarify the requirements of ceasing operation by agents or direct operations and to update statutory references in the rule.

Item 2008-46 - Amended submission to amend the Reasonable Time for Furnishing Title Evidence (P-25) procedural rule in Section IV of the Basic Manual to provide a requirement for title agents and direct operations to maintain auditable records and documents that demonstrate compliance with the rule and to update statutory references in the rule.

Item 2008-47 - Submission to amend the Statement of Assessment Received from and Recoupments Distributed to Title Insurance Company (T-G3) form in Section V of the Basic Manual.

Item 2008-48 - Submission to amend the Guaranty Assessment Recoupment Charge Remittance (T-G2) form in Section V of the Basic Manual.

Item 2008-49 - Submission to amend the Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1) in Section II of the Basic Manual to remove a reference to "serial number" in the form and to insert a reference to the "policy number."

Item 2008-50 - Submission to amend the Leasehold Mortgagee Policy Endorsement (T-5) in Section II of the Basic Manual to remove a reference to "serial number" in the form.

Item 2008-51 - Submission to amend the Leasehold Owner Policy Endorsement (T-4) in Section II of the Basic Manual to remove a reference to "serial number" in the form.

Item 2008-52 - Amended submission to amend the Policy Guaranty Fee (G.1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-53 - Submission to amend the Title Insurance Escrow Officer (L-2) rule in Section VI of the Basic Manual to provide a procedure for a title agent or direct operation to notify the Department upon a change of name of a licensed escrow officer and to update statutory references in the rule.

Item 2008-54 - Submission to amend the Statistical Plan to provide a Rate Code for the new Co-Insurance Endorsement (T-48) and to add reporting codes for the new personal property title insurance forms and endorsements.

The following items have been withdrawn:

Item 2008-29 - Submission to amend the Texas Title Insurance Information form to increase the threshold amount for arbitral matters to $2 million and to conform the language of the form to the Owner's Policy (T-1), the Loan Policy (T-2), and the Deletion of the Arbitration Provision (P-36).

Item 2008-34 - Submission to propose a new Tax Parcel Endorsement covering a single tract.

Item 2008-35 - Submission to propose a new Tax Parcel Endorsement covering multiple tracts.

Item 2008-36 - Submission to amend Procedural Rule P-9 to authorize a title company to issue the Tax Parcel Endorsements.

Item 2008-45 - Submission to amend P-24 to clarify payments for services rendered among title agents, companies and direct operations.

The Department has filed a copy of each of the proposed items with the Secretary of State's Texas Register Section. Persons desiring copies of the proposed items may obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701-3938. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

FISCAL NOTE. Robert R. Carter, Jr., Deputy Commissioner for the Title Division, has determined that, for each year of the first five years the proposal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Carter also has determined that for each year of the first five years the amendments are in effect there are a number of public benefits anticipated as a result of the amendments to the Basic Manual and Statistical Plan. The updating and revising of the administrative rules, procedural rules, forms, endorsements, definitions, reporting forms, and Statistical Plan allow for consistent administration, facilitate the efficiencies of the Department, and the closing of title transactions. The new and updated promulgated forms will impose no additional regulatory costs on companies participating in the title insurance market, and the costs of reproducing forms, estimated to be no more than $.15 per page for the cost of a photocopy, should be fully compensated by the existing premium schedule. As to all proposals, the department anticipates no differential impact between small, large, and micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses. The Department's analysis of any possible costs for compliance with the proposal that are detailed in the Public Benefit/Cost Note section of this proposal are also applicable for small and micro businesses that opt to write title insurance. Additionally, the proposed rules and forms provide an economic opportunity for the businesses in the title insurance industry, and businesses will be profitably compensated by a fee schedule. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR COMMENTS. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 21, 2009, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. Also, any comments received during or within 30 days of the hearing held on October 2, 2008, Docket Number 2690, are part of the record and have already been considered for purposes of this proposal.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 2551 and 2703

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective October 1, 2009 [~~May 1, 2008~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-3938.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903468
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 2551 and 2703

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective October 1, 2009 [~~May 1, 2008~~]. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903467
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER C. STANDARDS FOR STATE FIRE MARSHAL INSPECTIONS

28 TAC §34.303

The Texas Department of Insurance proposes an amendment to §34.303, concerning standards for State Fire Marshal inspections of buildings and premises in certain geographic areas of Texas. The proposed amendment is necessary to update the currently adopted Life Safety Code, which is used by the State Fire Marshal as standards for inspection of buildings and premises pursuant to Government Code §417.008. Section 417.008 authorizes the State Fire Marshal to enter, upon the complaint of any person, any building or premises in the state at any reasonable time to examine the structure for certain dangerous conditions. The Government Code §417.008 authorizes the Commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the State Fire Marshal may enforce §417.008. The standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. Additionally, the Government Code §417.005 authorizes the Commissioner, after consulting with the State Fire Marshal, to adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner. Section 34.303, which adopts by reference certain standards and recommendations of the National Fire Protection Association (NFPA), is amended to update the currently adopted 2006 Life Safety Code to the 2009 version. The adoption of the most recent Life Safety Code is necessary because as the technology for fire protection and prevention develops, the minimum standards of inspection also change. The NFPA is a nationally recognized standards-making association that classifies the most recent Life Safety Code as the minimum standards for fire protection and prevention, and as such, these standards also constitute the minimum standards for inspection for potential fire dangers. This results in better protection of the public from fire by the application of the most recent standards and recommendations for inspection. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enables both the fire protection industry and the public to know what standards are applicable in all jurisdictions. The NFPA adopted changes to the 2006 standards to: (i) add provisions relating to air traffic control towers, electrically controlled egress doors, certain horizontal sliding doors, elevator lobby access door locking, door inspection and maintenance, emergency evacuations and escape devices and systems, the placement and usage of alcohol-based hand sanitizer in educational and day care settings, and door locking in settings where occupants need specialized protection; (ii) standardize the usage of certain technical terms, including stories in height, finished ground level, grade plane, basement, and level of exit discharge; (iii) revise

the situations in which public address systems are acceptable for occupant alarm notification; and (iv) amend provisions relating to fire curtains, patient sleeping room windows in health care settings, and sprinkler requirements in high-rise health care settings. As provided in §417.008(e) of the Government Code, these proposed changes in standards do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

FISCAL NOTE. Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal implications to state or local government as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Maldonado also has determined that for each year of the first five years the proposed section is in effect, the anticipated public benefit as a result of the proposal is the employment of the most recent standards of inspection of buildings and premises in the state in order to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or buildings or structures. This means that inspections conducted by the State Fire Marshal in accordance with these most recent nationally recognized standards for detection of potential fire dangers will result in individual citizens, fire fighters, and buildings and structures being better protected. In order to properly protect life and property, it is necessary that the latest current nationally recognized standards for inspection of buildings and premises be utilized. This is consistent with the Government Code §417.008(e) which authorizes the adoption of "any appropriate standard developed by a nationally recognized standards-making association. . . ." but also provides that the adopted standards do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. There will be nominal costs to persons and entities required to purchase the updated standards. The estimated cost to purchase the proposed updated Life Safety Code is approximately $82.50 and will be the same cost for all persons and entities. Any other costs that result from compliance with the updated standards is the result of the legislative enactment of the Government Code §417.008 which imposes responsibility upon the State Fire Marshal to enter and inspect buildings and premises in the state in order to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or buildings or structures.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

This proposal specifies minimum fire and related hazard safety requirements for structures and buildings in Texas. All small or micro businesses in Texas will be required to comply with the proposed requirement. The cost analysis in the Public Benefit/Cost Note part of this proposal is also applicable to these small and micro businesses. The estimated cost for the purchase of the 2009 Life Safety Code from the NFPA is $82.50. Any other costs that result to small and micro businesses from compliance with the updated standards is the result of the legislative enactment of the Government Code §417.008 which imposes responsibility upon the State Fire Marshal to enter and inspect buildings and premises in the state in order to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or buildings or structures.

As required by the Government Code §2006.002(c), the Department has determined that the estimated costs of purchasing the 2009 Life Safety Code are nominal and will likely not have an adverse economic impact on small or micro businesses that are required to comply with this proposal. However, in the event that the proposal does have an adverse economic effect on small or micro-businesses that are required to comply with the proposal, the proposal does not require the statutorily mandated regulatory flexibility analysis specified by the Government Code §2006.002(c)(2). Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of the statute authorizing this proposal, the Government Code §417.008, is to ensure compliance with the most recent fire and related hazards standards of safety for the purpose of protecting life and property in this state. The proposed amendment establishes the most recent Life Safety Code as a minimum standard of compliance for buildings and structures.

The purpose of this proposal is to protect the health and safety of the fire fighters, individual citizens, and buildings and structures of Texas through the adoption of safety standards. In order to protect life and property in this state, it is necessary that all businesses, regardless of size, comply with the minimum safety requirements. The requirements in this proposal are consistent with the Government Code §417.008 which specifies that on the complaint of any person, the State Fire Marshal is entitled to enter any building or premises in Texas at any reasonable time for the purpose of inspection for dangerous conditions.

Therefore, the Department has determined in accordance with §2006.002(c-1) of the Government Code that because the purpose of this proposal and the authorizing statute, Government

Code §417.008, is to protect the safety of life and property in this state, there are no regulatory alternatives to the requirements in this proposal that will sufficiently protect the safety of people, buildings and structures in this state.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 21, 2009, to Gene C. Jarmon, General Counsel & Chief Clerk, Mail Code 1132A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 787149104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Mail Code 108-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 787149221. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendment is proposed pursuant to the Government Code §417.008 and §417.005 and the Insurance Code §36.001. The Government Code §417.008 authorizes the Commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the State Fire Marshal may enforce §417.008, relating to the State Fire Marshal's right of entry and examination and correction of dangerous conditions; the standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. The Government Code §417.005 authorizes the Commissioner, after consulting with the State Fire Marshal, to adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Government Code §417.008

§34.303. Adopted Standards.

The Commissioner adopts by reference: NFPA Life Safety Code 101-2009 [~~101-2006, except for Chapter 43, and NFPA 101-203, Sections 4.6.7 (Additions) and 4.6.8 (Modernization and Renovation)~~]. These copyrighted standards and recommendations are adopted, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903428
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 20, 2009
For further information, please call: (512) 463-6327

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.508

The Texas Department of Agriculture withdraws the emergency new §§19.500 - 19.508 which appeared in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2859).

Filed with the Office of the Secretary of State on August 4, 2009.

TRD-200903349
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: August 4, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §741.163

The State Board of Examiners for Speech-Language Pathology and Audiology withdraws the proposed repeal to §741.163 which appeared in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2360).

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903416
Kerry Ormson, Ed.D., Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: August 7, 2009
Proposal publication date: April 10, 2009
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

22 TAC §741.163

The State Board of Examiners for Speech-Language Pathology and Audiology withdraws the proposed new §741.163 which appeared in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2360).

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903417
Kerry Ormson, Ed.D., Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: August 7, 2009
Proposal publication date: April 10, 2009
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER O. TELEHEALTH

22 TAC §§741.211 - 741.215

The State Board of Examiners for Speech-Language Pathology and Audiology withdraws the proposed new §§741.211 - 741.215 which appeared in the April 10, 2009 issue of the *Texas Register* (34 TexReg 2360).

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903418
Kerry Ormson, Ed.D., Au.D.
Presiding Officer
State Board of Examiners for Speech-Language Pathology and Audiology
Effective date: August 7, 2009
Proposal publication date: April 10, 2009
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 9. AMBULANCE SERVICES

1 TAC §354.1115

The Texas Health and Human Services Commission (HHSC) adopts the amendments to 1 Texas Administrative Code (TAC) §354.1115, Authorized Ambulance Services, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4391) and will not be republished.

Background and Justification

Senate Bill 2424 of the 81st Legislature, Regular Session, 2009, requires the Health and Human Services Commission (HHSC) by rule to change the Medicaid authorization process for certain nonemergency ambulance services. Authorizations that are for a one-day nonemergency ambulance transport may be obtained on the same day or the next business day following the transport. If an authorization is requested for transport on multiple days, such as for a series of medical appointments, the authorization must be obtained prior to the first transport. HHSC must have staff available to evaluate requests for authorization for a minimum of 12 hours each day, excluding state holidays and weekends. Authorization requests that are granted must be effective for a period of not more than 180 days.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC did not receive any comments regarding the proposed amendment.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903429
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 17. BIRTHING CENTER SERVICES

1 TAC §354.1261, §354.1262

The Texas Health and Human Services Commission (HHSC) adopts the repeal of 1 Texas Administrative Code (TAC) §354.1261, Benefits and Limitations for Birthing Center Services, and §354.1262, Conditions for Participation for Birthing Center Services, without changes to the proposal as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4393) and will not be republished.

Background and Justification

The repeal of §354.1261, Benefits and Limitations for Birthing Center Services, and §354.1262, Conditions for Participation for Birthing Center Services, is a result of a federal mandate from the Centers for Medicare and Medicaid Services (CMS) that instructed Texas to discontinue Medicaid payments directly to birthing centers for services provided by the facility. This repeal of the Medicaid health services rules and the related reimbursement rule for birthing center services, 1 TAC §355.8181, which appears elsewhere in this issue of the *Texas Register,* will bring HHSC into compliance with the federal mandate from CMS.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC did not receive any comments regarding the proposed repeal of the rules.

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903430

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.457, Fiscal Accountability, under Title 1, Part 15, Chapter 355, Subchapter D, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4394) and will not be republished.

Background and Justification

Section 355.457 establishes the fiscal accountability process for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program. HHSC, under its authority and responsibility to administer and implement rates, is updating this rule to formalize certain limitations on hours allowed to be reported by ICF/MR providers (owners and related parties). Rates for this program are based on modeled rates, which incorporate cost information from ICF/MR provider cost reports. A modeled rate is considered fully-funded when the model is updated with current cost report information that has been adjusted for inflation to the rate period.

Limitations on allowable hours for owners and related parties are necessary to ensure that cost reports reflect only hours and associated costs that are reasonable and necessary in the normal conduct of operations. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious provider would pay for a given item or service. In determining the reasonableness of a given cost, the restraints or requirements imposed by arm's-length bargaining and the actions that a prudent person would take in similar circumstances are considered. Since related-party transactions are not constrained by the requirements imposed by arm's-length bargaining, additional tools are necessary to ensure that reported related-party hours are reasonable.

Currently, this rule specifies that allowable hours for owners and related parties are limited to the lesser of the actual hours worked or the hours for a comparable direct-care staff person assumed in the fully-funded model. The rule amendment codifies current practice by adding language that results in a less stringent limitation on the determination of allowable owner and related-party hours.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC received no comments regarding the proposed amendments to §355.457.

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903431
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.502, 355.503, 355.505, 355.507, 355.513

The Texas Health and Human Services Commission (HHSC) adopts new §355.502, Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers, and new §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program, under Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355. HHSC also adopts amended §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; and §355.507, Reimbursement Methodology for the Medically Dependent Children Program, under 1 TAC, Part 15, Chapter 355. Sections 355.502, 355.505 and 355.513 are adopted without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4397) and will not be republished. Sections 355.503 and 355.507 are adopted with changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4397). The text of the rules will be republished.

Background and Justification

HHSC concurrently adopts the repeal of §355.9022, Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities (DBMD). As a result of this repeal, certain parts of that rule's language is moved to new §355.513 to allow easier public access to the rules, as Subchapter E contains most of the community program rules. New §355.513 also adds a reimbursement methodology for rates for requisition fees in DBMD to provide payments for the cost of acquiring adaptive aids and minor home modifications. Requisition fees are currently not reimbursed in the DBMD

program but are reimbursed in other §1915(c) waiver programs. The adoption of the repeal of §355.9022 is contemporaneously adopted elsewhere in this issue of the *Texas Register.*

The definitions for professional services (nursing, physical, occupational and speech therapy, behavioral supports, dietary services and audiology) in the various Department of Aging and Disability Services (DADS) §1915(c) waiver programs, including Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Consolidated Waiver Program (CWP), Home and Community-Based Services (HCS) waiver, Texas Home Living (TxHmL) waiver, Medically Dependent Children Program (MDCP), and DBMD, are identical. However, the rates vary: CBA, CLASS, CWP, MDCP and DBMD use one set of rates and HCS and TxHmL use another set.

The current difference in nursing rates between HCS and TxHmL and the remaining DADS §1915(c) waiver programs was justified in the past because the billing guidelines for CBA, CLASS, CWP, MDCP, and DBMD differed from those for HCS and TxHmL. DADS is revising the HCS and TxHmL nursing billing guidelines to match the CBA, CLASS, CWP, MDCP and DBMD guidelines effective September 1, 2009. When data become available for HCS and TxHmL under the new billing guidelines, nursing rates will be calculated using data from all §1915(c) waiver program cost reports.

The difference in rates for other (non-nursing) professional services is due to the lack of robust cost data on these services in CBA, CLASS, CWP, DBMD, and MDCP. The vast majority of units of service for these services are provided in HCS and TxHmL. As a result of using the HCS and TxHmL database to set rates for the non-nursing professional services in CBA, CLASS, CWP, and DBMD, the rates for these services will increase to match the rates for HCS and TxHmL.

New §355.502 and §355.513, and the amendments to §§355.503, 355.505, and 355.507 will give HHSC the authority to combine allowable costs per unit for identical professional services in all DADS §1915(c) waiver programs into a single database for use in determining rates for these services. These rules will move HHSC closer to achieving its goal of standardizing professional service rates in community-based programs.

The amendment to §355.505 adds a reimbursement methodology for Day Activity and Health Services (DAHS.) This will allow DADS to implement DAHS as an option in CLASS.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC received comments regarding the proposed amendment to §355.503 and §355.507. A summary of the comments relating to the proposed rules and HHSC's responses follow:

Comment concerning §355.503. The commenter recommended that HHSC retain the reference to the Integrated Care Management (ICM) waiver program in the title of §355.503. The ICM waiver program will remain in effect until such time it is deemed appropriate to discontinue the waiver and transfer the participants to other §1915(c) waivers.

Response: HHSC is revising the rule in response to this comment.

Comment concerning §355.507(c): The commenter recommended that HHSC add a reference to the reimbursement methodology for personal assistance services in MDCP to §355.507(c). Personal assistance services are available in MDCP with or without delegation by a registered nurse (RN.) The rate for personal assistance services with delegation by an RN is modeled based on a different reimbursement methodology than the rate for personal assistance services without delegation by an RN. The current rules only reference the reimbursement methodology used for modeling the rate for personal assistance services without delegation.

Response: HHSC is revising the rule to correctly describe current practice.

The amendments and new rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Texas Medicaid contracted providers will be reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, Texas Medicaid contracted providers will be reimbursed for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, and speech pathology will be determined on a fee-for-service basis in the following manner:

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period

as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

(G) For personal assistance services, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care will be determined as a per day reimbursement using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services; and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care). The per day reimbursement for attendant care will be determined, based upon client need for attendant care into six levels of care. A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments. The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance. When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care III will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care III setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care III rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care III rates.

(3) Monthly reimbursement ceilings. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this title (relating to Reimbursement Methodology for Emergency Response Services (ERS)). The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids and minor home modifications for CBA participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) The rates for nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) will be determined in accordance with §355.502 of this title (Relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

(c) The rates for personal assistance services (PAS) without delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). The rates for PAS with delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs) and the add-on payment for the highest level of attendant compensation rate enhancement in accordance with §355.112(n) of this title (relating to Attendant Compensation Rate Enhancement).

(d) The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(e) Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care. The base rates used in this calculation do not include nursing facility rate add-ons.

(f) The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903432
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.722

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.722, Reporting Costs by Home and Community-based Services (HCS) Providers, under Title 1, Part 15, Chapter 355, Subchapter F, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4407) and will not be republished.

Background and Justification

Section 355.722 establishes the fiscal accountability process for the Home and Community-based Services (HCS) waiver program. HHSC, under its authority and responsibility to administer and implement rates, is updating this rule to formalize certain limitations on hours allowed to be reported by HCS providers for owners and related parties performing direct service activities. Rates for this program are based on modeled rates, which incorporate cost information from HCS provider cost reports. A modeled rate is considered fully funded when the model is updated with current cost report information that has been adjusted for inflation to the rate period.

Limitations on allowable hours for owners and related parties are necessary to ensure that cost reports reflect only hours and associated costs that are reasonable and necessary in the normal conduct of operations. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious provider would pay for a given item or service. In determining the reasonableness of a given cost, the restraints or requirements imposed by length-length bargaining and the actions that a prudent person would take in similar circumstances are considered. Since related-party transactions are not constrained by the requirements imposed by length-length bargaining, additional tools are necessary to ensure that reported related-party hours are reasonable.

Currently, this rule specifies that allowable hours for owners and related parties are limited to the lesser of the actual hours worked or the hours for a comparable direct-care staff person assumed in the fully-funded model. The rule amendment codifies current practice, which differs from the current rule, by adding language that results in a less stringent limitation on the determination of allowable hours for owners and related parties performing direct-service activities.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC received no comments regarding the proposed amendments to §355.722.

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903433
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §355.725, §355.791

The Texas Health and Human Services Commission (HHSC) adopts new §355.725, Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services (HCS) and amendments to §355.791, Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program, under Title 1, Part 15, Chapter 355, Subchapter F, without changes to the proposed text as

published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4410) and will not be republished.

Background and Justification

New §355.725 establishes the reimbursement methodology for professional services and requisition fees for the Home and Community-based Services (HCS) program and gives HHSC the authority to combine allowable costs per unit of service for HCS professional services with allowable costs per unit of service for identical professional services from other DADS §1915(c) waiver programs into a single database for use in determining reimbursement rates for these services in accordance with new §355.502, Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers which is being published as adopted elsewhere in this issue of the *Texas Register.* Amendments to §355.791 give HHSC similar authority for the TxHmL waiver program. These changes move HHSC closer to achieving its goal of standardizing professional service rates in community based programs.

New §355.725 also provides a reimbursement methodology for payment rates for requisition fees in HCS to provide payments for the cost of acquiring adaptive aids and minor home modifications for consumers. Requisition fees are currently not reimbursed in the HCS program but are currently reimbursed in other §1915(c) waiver programs.

The amendment to §355.791 will adjust payment rates for TxHmL to comply with the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009) which appropriated general revenue funds for provider rate increases for this program to set TxHmL rates equal to HCS rates for similar services. As well, this amendment revises §355.791 to replace outdated references to the legacy Department of Mental Health and Mental Retardation (MHMR) with references to DADS and to indicate that failure to maintain accurate records will result in HHSC notifying DADS to place the TxHmL program provider on vendor hold. The current rule language requires both the TxHmL program provider and all waiver contracts to be placed on vendor hold.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC received no comments regarding proposed new §355.725 or the proposed amendments to §355.791.

The amendment and new rule are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903434

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, in its Reimbursement Rates Chapter, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4415) and will not be republished.

Background and Justification

The amendment outlines how the 24-Hour Residential Child-Care rates, effective September 1, 2009, through August 31, 2011, will be determined. It adjusts payment rates for the 24-Hour Residential Child-Care program to comply with the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for this program as follows:

For foster families, the payments effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the minimum rate paid to foster families for that level of service in effect August 31, 2009, plus 3.33 percent.

For child placing agencies (CPAs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2009, plus 2.41 percent, which is equivalent to a 1.33 percent increase for CPA retainage and a 3.33 percent increase in pass-through funds for foster families. The following facility types are included as CPAs: independent foster family/group homes; independent therapeutic foster family/group homes; independent habilitative foster family/group homes; and independent primary medical needs foster family/group homes.

For residential care facilities (RCFs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to RCFs for that level of service in effect August 31, 2009, plus 9.30 percent.

For emergency shelters, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect August 31, 2009, plus 8.68 percent.

For psychiatric step-down services, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect on August 31, 2009.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC received no comments regarding the proposed amendments to §355.7103.

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903435
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) adopts the amendment to 1 TAC §355.8052, concerning Inpatient Hospital Reimbursement, without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4416) and will not be republished. The amendments update the Medicaid inpatient hospital reimbursement methodology for state fiscal year (FY) 2010 and remove references to FY 2009 rebasing.

Background and Justification

The amendment will change the Medicaid inpatient hospital reimbursement methodology within §355.8052 to remove references to FY 2009 rebasing, and to give HHSC the authority to rebase and proportionately adjust inpatient hospital payment division standard dollar amounts within current appropriations for payments during FY 2010 in accordance with the 2010-11 General Appropriations Act (Article II, Health and Human Services Commission, Rider 68, S.B. 1, 81st Legislature, Regular Session, 2009).

Rebasing inpatient hospital rates for FY 2009, provided for in the current version of §355.8052, was contingent on the federal Centers for Medicare and Medicaid Services (CMS) approving and HHSC implementing the Medicaid reform waiver. Because CMS has not approved HHSC's pending Medicaid reform waiver, HHSC will not rebase Medicaid inpatient hospital rates for FY 2009.

The payment division standard dollar amount (PDSDA) is a component of the Medicaid inpatient reimbursement formula for hospitals. The PDSDA is the weighted average dollar amount per claim calculated for all hospitals in a payment division, which is a grouping of hospital-specific standard dollar amounts (HSDA). The HSDA is based on each hospital's average cost per claim for a designated base year, adjusted by the case mix index and cost-of-living index.

HHSC amended §355.8052 to rebase and adjust PDSDAs during FY 2010 to be applied prospectively. For FY 2010, HHSC will rebase the PDSDAs for inpatient hospitals using a base year of federal fiscal year (FFY) 2008. The FFY 2008 base year will include the 6-month grace period through March 31, 2009. HHSC has elected to use the 12-month period of FFY 2008 to reflect the change to Medicare Severity Diagnosis Related Groups (DRG) that occurred in October 2007. HHSC will adjust PDSDAs proportionately for each hospital so that the resulting expenditures incurred using the recomputed PDSDAs are not higher than the funds appropriated to HHSC for this purpose. In addition, a few identified hospitals' current PDSDAs will be adjusted to correspond to current payment divisions, and these adjusted PDSDAs will be used in the proportional rebasing. This adjustment is intended to ensure that all hospitals are consistently reimbursed based on legislative guidance and HHSC policy and regulation.

Diagnosis Related Group (DRG) statistics (relative weight, mean length of stay, and day outlier threshold) are another component of the Medicaid inpatient hospital reimbursement formula. The proposed amendment gives HHSC the authority to update all DRG statistics for FY 2010 based on FFY 2008 base-year claims information. HHSC will implement the DRG update prospectively when it implements the rebased PDSDAs. HHSC is updating DRG statistics as part of the rebasing and to better reflect differences in the complexity of care.

The amendment also clarifies the sections of the rule related to the rates for new hospitals and hospital mergers. The amendment defines the duration of the new-hospital PDSDA as five years from the effective date of the new hospital PDSDA rate. The proposed amendment clarifies that for merged hospitals, the combined PDSDA, which results in one reimbursement rate for the merged hospitals, applies as of the date the Medicare program recognizes the merger. The amendment proposes additional methodologies for calculating merged hospital PDSDAs.

Comments

During the 30-day comment period, which ended August 2, 2009, written comments were received from the Texas Hospital Association (THA), Teaching Hospital of Texas (THOT), Hospital Corporation of America (HCA), and an individual. The rule was not changed in response to the comments received. A summary of the comments and responses follows.

Comment: One comment received was in favor of HHSC's decision to forgo the use of the FY 2006 DRG rate rebasing database and instead use a more recent base period that includes Medicare Severity Diagnosis Related Grouping (MS-DRG) assignments. However, the commenter expressed concern regarding the use of FFY 2008 versus using FY 2009 data. The preference expressed was to target the implementation of the revised inpatient hospital rates for FY 2011 using FY 2009 base year data.

Response: HHSC appreciates the comment received in support of using a more recent data period. However, HHSC is limited by time constraints related to the hospital cost report filing deadlines and the auditing of this data to determine the ratio of cost to charges (RCC), which would not allow the use of FY 2009 as the base year claims data. The use of FFY 2008 data avoids

this limitation since hospitals have varying fiscal year ends and this time period will also allow more hospitals to have cost reports filed with data to include primary care case management (PCCM) information. The rule language was not changed in response to the comment.

Comment: The second comment received was in favor of HHSC's use of FFY 2008 as the basis for hospital standard dollar amounts (SDA) to bring individual hospitals' SDAs back in line with their audited cost. The commenter was not in favor of HHSC applying a reduction factor to the SDAs to keep overall expenditures at the current funding level.

Response: HHSC was limited by appropriations from the 81st Legislative Session to update the PDSDA to a more current cost basis and to remain within the current level of state expenditure. HHSC will determine the overall state fiscal impact of fully rebasing the hospitals' PDSDAs and then apply a pro rata reduction to all hospital's PDSDAs to maintain the current state expenditure level. The rule language was not changed in response to the comment.

Comment: The third comment received expressed concerns regarding the inclusion of the PCCM program claims and requested that HHSC provide hospitals with wide latitude in appealing these claims. Additionally, the commenter expressed a concern regarding the HHSC Office of Inspector General (HHSC-OIG) review of hospital claims and the resulting adjustment of the MS-DRG assignment. Texas hospitals disagree strongly with a high percentage of the adjustments made by the HHSC-OIG, due to the strict compliance with ICD-9-CM coding guidelines required under the Health Insurance Portability and Accountability Act (HIPAA). The commenter stated these post-review adjustments often occur after the six-month grace period has lapsed, and therefore are never reflected in the SDA rates and MS-DRG weights established by HHSC.

Response: HHSC is aware of the hospital industry apprehension with regards to the method and processes for the inclusion of the PCCM claims. HHSC believes that the inclusion of the PCCM claims will provide a better representation of each hospital's overall Medicaid cost of services. HHSC will work with the hospital industry on the overall approach to the use of the PCCM claims data and the impact to the hospitals' PDSDAs. The rule will not be changed regarding the hospital's request for review of claims for rebasing. The request for review of claims is related to mathematical errors and is not the process for appealing the adjudication of the claims payment. The appeal of the DRG assignment or reimbursement should be addressed by the individual hospital through the claims adjudication appeal process. The rule language was not changed in response to the comment.

Comment: The fourth comment received expressed concerns regarding the base year 6-month grace period for claim adjudication and the use of admission dates of service as the criteria for inclusion in the base year claims data. The commenter suggested changing from the admission date to the discharge date as the selection criteria. This change would result in a definitive end for all patients, and would therefore be equal and comparable for all facilities.

Response: HHSC will take the request under advisement for future rule changes, as the use of admission dates for inclusion in base year claims data was not proposed as a change in the published proposed rule. HHSC is proposing a change in the base year period from FY 2008 to FFY 2008 to allow for a full year of claims data based on the MS-DRG that was implemented October 1, 2007. The current claims system determines the DRG or MS-DRG assignment based on admission date. If the discharge date were used as the criteria for inclusion in the base year period, this could result in a number of the claims being included based on the DRG assignment versus the MS-DRG assignment. The DRG assignment would require the claims to be remapped to the MS-DRG assignment or excluded from the rebasing calculation. The use of discharge date as the selection criterion would not be feasible to implement due to time constraints that prevent changing claims system assignment of MS-DRG based on admission date. The rule language was not changed in response to the comment.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903436
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §§355.8061, 355.8063, 355.8068

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8061, Payment for Hospital Services, and §355.8063, Reimbursement Methodology for Inpatient Hospital Services, and adds new §355.8068, Supplemental Payments to Certain Urban Hospitals, to consolidate and update the inpatient and outpatient supplemental payment rule language for eligible publicly-owned or -affiliated urban hospitals. The proposed amendments and new rule are adopted without changes to the proposed text as published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4067) and will not be republished.

Background and Justification

HHSC is combining the Medicaid inpatient and outpatient hospital supplemental payment methodologies from existing rules into one new comprehensive rule that will fully describe supplemental payments made to eligible publicly-owned or -affiliated urban hospitals. HHSC is updating the language in the new rule to better explain the complex processes used in urban hospital supplemental payments.

The proposed new rule also expands the number of publicly-owned or -affiliated urban hospitals that are eligible to receive Medicaid supplemental payments by updating the participation criteria. Currently, 11 hospitals receive Medicaid supplemental payments. New §355.8068 makes six additional public hospi-

tals in counties with populations greater than 100,000 eligible for these payments.

HHSC will not make supplemental payments to any new hospital eligible under this rule on or after September 1, 2009, until the Medicaid State Plan Amendment has been approved by the Centers for Medicare and Medicaid Services (CMS).

HHSC is adopting these rules as published in the June 19, 2009 Texas Register. HHSC then plans to immediately publish changes to §355.8068 to adjust the timing basis for recognizing hospital charges and payments to align with the Disproportionate Share Hospital (DSH) program for the upcoming program year.

Comments

The 30-day comment period ended July 19, 2009. During this period, HHSC received two comments regarding proposed new §355.8068.

Tomball Regional Medical Center submitted a letter to HHSC indicating its support of the proposed changes and thanking the state for recognizing its role as an urban hospital in providing quality healthcare to the poor in Northwest Harris County. (Tomball Regional Medical Center is one of the six new urban hospitals that is eligible for the program based on the updated participation criteria in new §355.8068.) The Chief Executive Officer at Tomball, expressed his gratitude for the state allowing the new urban hospitals to participate in the Large Urban Upper Payment Limit (UPL) Program and stated this would enhance Tomball Regional Medical Center's ability to serve the Medicaid population in its service region. No actions were requested except to proceed promptly with adoption of the rule.

The Texas Hospital Association (THA) also submitted a letter to HHSC on the proposed rule changes. The Vice President of Healthcare Policy Analysis, indicated he had "no specific comments on detailed language contained in the rules" for this particular rule, but appreciates the opportunity to comment on proposed changes to hospital payment rules as "supplemental payments are vitally important to our Texas hospitals, and our association supports efforts by the agency (HHSC) to facilitate Medicaid supplemental payments to every Texas hospital." No actions were requested by THA.

The amendments and new rule are adopted under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code §32.021, and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903437

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: June 19, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of 1 Texas Administrative Code (TAC) §355.8065, Additional Reimbursement to Disproportionate Share Hospitals and §355.8067, Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals and replaces them with new §355.8065, Disproportionate Share Hospital (DSH) Reimbursement Methodology. The rules are adopted without changes to the proposed text as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4425) and will not be republished.

Background and Justification

Hospitals participating in the Texas Medicaid program that meet the Disproportionate Share Hospital (DSH) program conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement through the DSH program. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for DSH reimbursement and the amount of reimbursement, as set out in new §355.8065.

The adopted new rule contains the following changes.

First, HHSC is combining pertinent language from existing §355.8065 and §355.8067 into new §355.8065. Current §355.8065 contains the DSH methodology for all hospitals other than state-owned teaching hospitals. Section 355.8067 contains the DSH reimbursement methodology for state-owned teaching hospitals. Language from both current rules will be included in new §355.8065 so that the qualification and payment methodologies for all DSH hospitals will be contained in one rule.

Second, the adopted new rule modifies the rule language from current §355.8065 to account for changes required with the adoption of the Centers for Medicare and Medicaid Services' (CMS) DSH audit rule published on December 19, 2008, in the *Federal Register,* Vol. 73, No. 245, made effective on January 19, 2009. The federal DSH audit rule incorporates new reporting requirements and audit requirements that states must adhere to in order to be eligible to receive federal DSH funds. Under the new federal DSH audit rule, an independent certified audit must be performed for each completed Medicaid State Plan rate year beginning with the 2005 DSH program year. The audits will determine whether HHSC computed hospital-specific DSH limits in accordance with the stricter DSH audit rule definitions and whether the payments made to any hospital exceeded the audited hospital-specific limits. Beginning with the 2011 DSH program year, HHSC will recoup DSH overpayments made to individual hospitals identified during the audit process and redistribute the recouped funds to other qualified DSH hospitals,

if sufficient amounts of uncompensated care expenses are available for additional DSH payments.

Third, new §355.8065 does not include the language in current §355.8065(f)(2), §355.8065(i), and §355.8067(j), which relate to Medicaid reform initiatives set out in Chapter 531, Texas Government Code, Subchapter N, Texas Health Opportunity Pool Trust Fund. HHSC is removing this language because the Medicaid reform initiatives were contingent on CMS's approval of Texas' Medicaid reform waiver, which is still pending.

Finally, HHSC adds language to clarify current practices and expands the definition section in new §355.8065 to better explain the complex processes used in the DSH reimbursement program.

Comments

During the 30-day comment period, which ended August 2, 2009, written comments were received from the Texas Hospital Association (THA), Teaching Hospitals of Texas (THOT), and Hospital Corporation of America (HCA). Comments were also received from two healthcare consultancies, BayCo Services, Inc., and Adelanto. The published rule was not changed in response to the comments received. A summary of the comments and responses follows.

Comment: HHSC received comments supporting its plan to change the data period used in the program from claims with an admission date in a state fiscal year to claims adjudicated in the state fiscal year for the 2010 program year and in the relevant DSH data year beginning in 2011 and thereafter.

Response: HHSC appreciates the support of this rule change and believes that the new rule language will facilitate quicker end-of-year claims reporting and validation of the data. The rule language was not changed in response to this comment.

Comment: HHSC received comments supporting its plan to redistribute the recoupment of DSH funds resulting from an overpayment.

Response: HHSC appreciates the support of this rule change and believes that the new rule language will benefit HHSC as well as the provider community. The rule language was not changed in response to this comment.

Comment: HHSC received comments expressing concern regarding validation of hospital data from the Medicaid managed care contractors. The proposed change places the burden on the hospitals to rectify data errors promulgated by the contractors in the data they report to HHSC. The comment suggests that this change will place an onus on hospitals to "correct" inaccurate data supplied by the Medicaid contractors and absolve the contractors from negative consequences for failing to do so. The commenter recommended imposing significant liquidated damages for contractors for failure to perform their responsibility adequately.

Response: Previously the onus was on HHSC to correct inaccurate data, when the responsibility for the accuracy of the data and the resolution of data problems lies between the hospital and the managed care contractor. HHSC will take these comments under advisement when it develops provisions for liquidated damages for contractors. The rule language was not changed in response to this comment.

Comment: HHSC received comments criticizing added language that HHSC may recover the costs of federally required audits from non-state hospitals. The commenter believes the state and federal government should bear the costs of these audits.

Response: HHSC is concerned that the cost of an "independent audit," as required by the new federal DSH audit rule, will be a burden on the state and federal government. If there is not enough money appropriated for this expense, HHSC needs to have this in the rule to cover the expense to comply with the federal regulation. The rule language was not changed in response to this comment.

Comment: HHSC received comment regarding the hospital audit participation fee. The commenter suggested that the language in subsection (o)(1)(F) be either eliminated or changed to read: "Subject to legislative direction, HHSC may recover from audited non-state hospitals the costs of audits that are required by federal law."

Response: HHSC believes that it should have the ability to implement a fee if it is determined that the cost of the federal DSH audit creates too much burden on the state. If future legislative direction is received, HHSC will comply with the legislation; however, none has been received thus far. The rule language was not changed in response to this comment.

Comment: HHSC received comments concerning the requirement that merged hospitals submit the CMS tie-in notice prior to the start of the DSH program year. Hospitals often have to wait for CMS to send the notice, which can take a long time. One commenter suggested a one-year exception period for hospitals that submitted provider enrollment form CMS -855As to CMS prior to July 3, 2009, or that HHSC delay implementation of this section of the rule until October 1, 2010.

Response: HHSC appreciates these comments but believes that recognizing mergers during the DSH program year creates variability in payments to other DSH providers throughout the year and that this requirement will help to maintain a consistent payment schedule. Hospitals in the process of a merger can still apply for DSH and participate in DSH if they are found to be eligible, but their aggregate data from the two merged hospitals will not be considered during that particular DSH program year. The rule language was not changed in response to this comment.

Comment: HHSC received comments regarding allotment of available DSH funds. The commenters are concerned about the allocation of federal DSH funds over the next ten years, and that the state's policy of reimbursing state hospitals up to their limits first will diminish the remaining funds available to non-state hospitals and institutions for mental disease (IMDs). One commenter recommended that HHSC consider increasing the weighting factors that are applied to the data for certain non-state hospitals to maintain the program's stability.

Response: Since future DSH allotments are not known at this time, changes in DSH allotments in the future can be addressed at that time. For DSH program years 2010 and 2011, HHSC is in receipt of additional stimulus funds for DSH, which are providing non-state hospitals more funds than in prior years. The rule language was not changed in response to this comment.

Comment: HHSC received comments that Medicaid patient days and charges should be included for Medicaid eligible clients, regardless of when the hospital billed for the client, or when the client became eligible. In some cases it takes over a year for a client to become eligible, and hospitals are unable to bill Medicaid due to the 365-day claim filing deadline.

Response: Claims that have a valid reason for delay such as determination of eligibility will be included in the following DSH data year. The rule language was not changed in response to this comment.

Comment: HHSC received a comment regarding the reporting of patient census days. Hospitals generally report patient days by hospital fiscal year. The commenter suggested that HHSC update reporting documents, including the annual survey and DSH application, to reflect applicable reporting periods and also recommended that HHSC collect the data from hospitals based on the federal fiscal year and not apportion hospital patient days based on hospital cost report data.

Response: HHSC will take this comment under advisement. The rule language was not changed in response to this comment.

Comment: HHSC received a comment requesting clarification on which categories of dual eligible clients should be included in subsection (b)(40)(A)(v), which deals with total Medicaid inpatient days for dual eligible patients.

Response: HHSC believes that the definition of "dually eligible patient" in subsection (b)(11) provides sufficient guidance. The rule language was not changed in response to this comment.

Comment: HHSC received comments that in subsection (b)(42), the definition of total state and local revenue should clarify that hospitals are able to include the state share of Children's Health Insurance Program payments as state and local revenue. One commenter stated that this is too narrow a definition according to their interpretation of the CMS Medicaid DSH rules governing the determination of a hospital's low income utilization rate.

Response: HHSC clarified this definition in modifications made in state fiscal year 2008 rule revisions. The rule language was not changed in response to this comment.

Comment: HHSC received comments related to subsections (b)(44) and (f)(2)(A) that hospitals will have a difficult time identifying which data to report for the uninsured, and which uninsured claims are adjudicated. The commenter suggested that HHSC provide additional information on reporting adjudicated claims through either the DSH survey or the DSHS Annual Survey.

Response: The published rule defines uninsured costs to be for patients "admitted" during the DSH data year. HHSC will define "uninsured costs" on its DSH application and annual survey and seek additional clarification from CMS on its interpretation of uninsured costs. The rule language was not changed in response to this comment.

Comment: HHSC received a comment related to hospitals' withdrawing from the DSH program and having to wait a full year before they can apply for DSH. The commenter suggests this section be removed.

Response: HHSC reduced the wait period from three years to one year and believes that this language is still needed to keep hospitals from trying to maximize their payments in UPL or DSH depending on the outcome of their hospital's data against other hospitals. The rule language was not changed in response to this comment.

Comment: HHSC received a comment regarding subsection (o), which details the independent audit process that has to be followed by HHSC each year. The hospital audit process will prove especially onerous on hospital systems as they often have their data audited on a system-wide basis as opposed to having individual hospitals within the system audited. As a result, audited financial information for an individual hospital may not be available. The commenter suggested subsection (o)(1) should read "Hospital financial statements and other auditable hospital accounting records that are readily available."

Response: HHSC will work with CMS and the independent auditors to ensure federal audit requirements are met and believes that greater understanding of hospital systems and best practices will emerge from this process. The rule language was not changed in response to this comment.

Comment: HHSC received a comment regarding the change in the treatment of federal natural disaster hospitals. The change is felt to be contrary to the original intent of the designation.

Response: HHSC continues to allow a hospital's data for the most recent year prior to the natural disaster. HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using the data from the DSH data year that is two years prior to the DSH program year. This language reflects the original intent of the designation as previously applied and as approved by CMS. The rule language was not changed in response to this comment.

Comment: HHSC received comment suggesting that HHSC clarify that DSH data year for DSH program year 2010 is state fiscal year 2008 and not the hospital's own fiscal year ending in 2008.

Response: HHSC believes the current rule language accurately describes the data sources used for the DSH 2010 program year. The rule language was not changed in response to this comment.

1 TAC §355.8065, §355.8067

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903438
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §355.8065

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal

medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903439
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8081

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8081, Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, and Licensed Psychological Associates' Services, under Title 1, Part 15, Chapter 355, Subchapter J, Division 5 of the Texas Administrative Code. The proposed rule is adopted without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4239) and will not be republished.

Background and Justification

The Texas State Board of Examiners of Psychologists requires a licensed psychological associate (LPA) to work under the supervision of a licensed psychologist and does not allow an LPA to engage in independent practice. Currently, Texas Medicaid does not reimburse licensed psychologists for services provided by an LPA who works under the supervision of a licensed psychologist and does not allow an LPA to enroll as a Medicaid provider.

Medicare allows reimbursement to clinical psychologists for services performed by an LPA under the direct supervision of the clinical psychologist. The Code of Federal Regulations (42 CFR §410.71) states that the services performed by an LPA are covered under Medicare if: the services are performed under the direct supervision of a licensed psychologist; the licensed psychologist is immediately available to provide assistance and direction throughout the time the service is being performed; and the LPA performing the service is an employee of either the licensed psychologist or the legal entity that employs the licensed psychologist.

The adopted rule aligns Medicaid policy with Medicare by allowing a licensed psychologist to be reimbursed for services performed by an LPA when the LPA is under the direct supervision of the licensed psychologist, the psychologist is immediately available during the time the service is provided by the LPA, and the LPA is employed by the psychologist or the psychologist's employer. The supervising psychologist will be reimbursed 70 percent of the Medicaid fee that would be paid to a psychologist for the same service. The adopted rule also remains consistent with the Texas State Board of Examiners of Psychologists rules that prohibit an LPA from engaging in independent practice. Allowing Medicaid reimbursement for services provided by an LPA is expected to expand access to behavioral health services because it allows a new provider type to perform Medicaid reimbursable services.

No comments were received during the 30-day comment period.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903440
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 31, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 10. BIRTHING CENTER SERVICES

1 TAC §355.8181

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Medicaid reimbursement rule, §355.8181, Reimbursement (for birthing center services) under Title 1, Part 15, Chapter 355, Subchapter J, Division 10 of the Texas Administrative Code (TAC), without changes to the proposal as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4434) and will not be republished.

Background and Justification

The repeal of §355.8181, Reimbursement (for birthing center services), is a result of a federal mandate from the Centers for Medicare and Medicaid Services (CMS), which instructed Texas to discontinue Medicaid payments to birthing centers for services rendered in the facility. The repeal of the reimbursement rule for birthing center services and the related Medicaid health services rules, 1 TAC §354.1261 and §354.1262, which also appear in this issue of the *Texas Register,* will bring HHSC into compliance with the federal mandate from CMS.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC did not receive any comments regarding the proposed repeal of the rule.

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance

(Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903441
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER M. MISCELLANEOUS MEDICAID PROGRAMS
DIVISION 2. MEDICAID WAIVER PROGRAM FOR PEOPLE WITH DEAF-BLINDNESS AND MULTIPLE DISABILITIES

1 TAC §355.9022

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.9022, Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities, under Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, Subchapter M, Division 2, without changes to the proposal as published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4435) and will not be republished.

Background and Justification

Section 355.9022 establishes the rate methodology for the Deaf-Blind with Multiple Disabilities (DBMD) Waiver program operated by the Texas Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is repealing these rules and adopting rules for the DBMD rate methodology under 1 TAC, Part 15, Chapter 355, Subchapter E, Community Care for Aged and Disabled, with changes.

This repeal and the adoption of these rules in a different chapter will result in the DBMD reimbursement methodology rules being moved from Subchapter M, Miscellaneous Medicaid Programs, to Subchapter E, Community Care for Aged and Disabled, a subchapter which contains similar rules. This movement of the rules will make them more accessible to the public.

Comments

The 30-day comment period ended August 2, 2009. During this period, HHSC did not receive any comments regarding the proposed repeal of §355.9022.

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903442
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.203

The Texas Department of Agriculture (the department) adopts amendments to §1.203, concerning the Texas-Isreal Exchange (TIE) Advisory Committee, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4436). The amendments are adopted to make the section conform to new requirements established under Senate Bill (SB) 1016, 81st Legislative Session, 2009, that changed the existing TIE Board to an Advisory Committee and changed other requirements, and to add a reporting provision, as required by Texas Government Code, Chapter 2110. The amendments change the name of the entity from a board to committee, change the duration of the committee, and amend the duties of the committee to conform to changes made by SB 1016. A reporting requirement is also added to provide how the committee will report its activities to the department and the Commissioner.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code (the Code), §45.004, which provides the department with the authority to adopt rules for administration of its duties under Chapter 45, relating to the Texas-Israel Exchange Research Program, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect; and Texas Government Code, §2110, which provides that a state agency that establishes an advisory committee shall by rule state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903448
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

SUBCHAPTER E. ADVISORY COMMITTEES

The Texas Department of Agriculture (the department) adopts the repeal of §1.207 and amendments to §1.209, concerning the Wine Marketing Assistance Program Advisory Committee and the Wine Industry Development and Marketing Advisory Committee, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4437). The repeal and amendments are adopted to conform the sections with changes made by Senate Bill 1016 (SB1016), 81st Legislature, 2009, which eliminates the existing Wine Marketing Assistance Program Advisory Committee and the existing Wine Industry Development Advisory Committee and creates a new Wine Industry Development and Marketing Advisory Committee. The repeal of §1.207 eliminates the Wine Marketing Assistance Program Advisory Committee. The amendments to §1.209 provide the name, composition, and terms of members of the new Wine Industry Development and Marketing Advisory Committee.

No comments were received on the proposal.

4 TAC §1.207

The repeal of §1.207 is adopted under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; §2110.008, which authorizes an agency establishing an advisory committee to designate the duration of a committee; the Texas Agriculture Code (the Code), §50B.002, as amended by SB 1016, which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903449
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

4 TAC §1.209

The amendments to §1.209 are adopted under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; §2110.008, which authorizes an agency establishing an advisory committee to designate the duration of a committee; the Texas Agriculture Code (the code), §50B.002, as amended by SB 1016, which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903450
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §§4.1 - 4.4

The Texas Department of Agriculture (the department) adopts the repeal of Title 4, Part 1, Chapter 4, Cooperative Marketing Associations §§4.1 - 4.4, concerning Cooperative Marketing Association license regulations, without changes to the proposal published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4240). The repeal is adopted to eliminate unnecessary sections in this chapter to conform to new requirements established under Senate Bill (SB) 1016, 81st Legislative Session, 2009, that removed the responsibilities for the licensing of Cooperative Marketing Association by the department. The repeal eliminates rules related to the department's issuance of a license to cooperative marketing associations.

A comment in favor of the repeal was submitted by the Texas Agricultural Cooperative Council, stating that the repeal will eliminate duplication of reporting paperwork by other state agencies and a needless annual licensing fee.

The repeal is adopted under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules for administration of its duties under the Code; §52.151, as amended by SB 1016, 81st Texas Legislature, 2009, to eliminate the requirement that a marketing association pay to the department an annual licensing fee established by the department by rule; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903364

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 12. WEIGHTS AND MEASURES

The Texas Department of Agriculture (the department) adopts amendments to Chapter 12, Subchapter A, §12.1, and Subchapter H, §12.72 and §12.73, concerning regulation of public weighers, without changes to the proposal published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4601). The amendments are adopted to make revisions to the public weigher regulations to conform to requirements established by the enactment of Senate Bill (SB) 1016, 81st Legislative Session, 2009, which requires licensing of businesses, rather than the individuals employed by the business; and eliminates the distinction between state and county public weighers. Changes are made throughout the sections for purposes of clarification and to make the sections consistent with SB 1016. In addition, the department believes that the result of the adopted amendments will be a more streamlined licensing process and efficient use of agency resources.

The amendments to §12.1 remove definitions for "County Public Weigher," "Deputy Public Weigher," and "State Public Weigher." A new definition for a "Public Weigher" is added. Section 12.72 is amended to eliminate the distinction between county and state public weighers and to also change the bond amount required for a license. Section 12.73 is amended to establish a registration fee for a public weigher.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §12.1

The amendments to §12.1 are adopted under the Texas Agriculture Code, §13.258, which provides the department with the authority to adopt rules related to the regulation and enforcement of public weighers and §13.255, as amended by SB 1016, which provides the department with the authority to establish fees for a public weigher certificate of authority; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903451
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER H. PUBLIC WEIGHERS

4 TAC §12.72, §12.73

The amendments to §12.72 and §12.73 are adopted under the Texas Agriculture Code, §13.258, which provides the department with the authority to adopt rules related to the regulation and enforcement of public weighers and §13.255, as amended by SB 1016, which provides the department with the authority to establish fees for a public weigher certificate of authority; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903452
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM

The Texas Department of Agriculture (the department) adopts amendments to §§14.1 - 14.4, 14.10, 14.13, 14.14, and 14.21, concerning to the Perishable Commodities Handling and Marketing Program, with a change to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4440). The amendments to §§14.1, 14.2 and 14.4 are made to clarify the definition of "citrus fruit", to clarify requirements for showing a proof of ownership, and to formalize current practice in initiating proceedings to cancel a license for failure to reimburse the Produce Recovery Fund (Fund). The amendments to §§14.3, 14.10, 14.13, 14.14, and 14.21 are adopted due to the passage of Senate Bill 1016 (SB 1016) during the 81st Legislative Session, which amended Texas Agriculture Code, Chapters 101 and 103, the statutory authority for the Handling and Marketing of Perishable Commodities program, to eliminate the cash dealer license category, authorize the filing of claims against persons who are required to be licensed, increase the time for filing of claims to two years after the date of the violation, and change the amounts which may be paid from the fund and method of reimbursement to the Fund. The amendments will also result in the efficient use of department resources and perishable commodity regulations that provide greater protection and assistance to producers that do not receive payment for produce sold to a licensee or persons required to be licensed. Section 14.14(a)(2) is adopted with a change to correct a grammatical error. Sections 14.1 - 14.4, 14.10, 14.13, and 14.21 are adopted without changes and will not be republished.

The amendments to §14.1 eliminate the definition for cash dealer and clarify the definition for citrus by specifying associated genera and including lemons, limes, and tangerines. The amendments to §14.2 eliminate the requirements for citrus proof of ownership for a producer and their employees when citrus fruit is be-

ing hauled from the farm or grove to market or the place of first processing. The amendments to §14.3, delete a fee for a cash dealer license since a cash dealer license will no longer be required. The amendments to §14.4 specify the timing in which the department may initiate proceedings to cancel a license for a person who fails to reimburse and or fails to agree in writing to reimburse the Produce Recovery Fund. The amendments to §14.10 amend eligibility requirements for filing a claim against the Produce Recovery Fund by allowing claims to be filed against a person required to be licensed (in addition to those who are licensed) and establishing a two year period of eligibility, from the date a payment was due, for filing a claim. The amendments to §14.13 establish the amount of a claim eligible for payment from the fund. The eligible amount for claims are adopted for violations occurring prior to September 1, 2009 as well as those claims filed for violations on or after September 1, 2009. The amendments to §14.14 update the requirements for reimbursement to the Produce Recovery Fund by a licensee or a person required to be licensed. The amendments to §14.21 clarify that the department may collect fees from a person required to be licensed.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments to §§4.1, 14.2, and 14.4 are adopted under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §101.006, which provides that the department shall charge a registration fee for a cash dealer as provided by department rule, as repealed by SB 1016, the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903419
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §§14.10, 14.13, 14.14

The amendments to §§14.10, 14.13, and 14.14 are adopted under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

§14.14. Reimbursement to the Fund.

(a) If the department pays a claim against a licensee, or a person required to be licensed, from the Fund:

(1) Upon issuance of a final determination from the department or the Board, the licensee shall reimburse the total amount paid by the Fund or agree in writing to reimburse the Fund the total amount paid by the Fund. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the fund one and one-half times the amount of the claim paid by the Fund, upon issuance of a final determination from the department or the Board. Payment to the Fund is due in full within 30 days of the date of the final agency determination. If the licensee, or a person required to be licensed, cannot pay the full amount to the Fund at that time, the department may allow the licensee, or a person required to be licensed, to pay the amount owed to the Fund on an amortization schedule set out in paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the Fund for payments made to the claimant, the licensee, or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the Fund). If the licensee, or a person required to be licensed, cannot pay the full amount to the claimant at that time, the department may allow the licensee, or a person required to be licensed, to pay the amount owed to the claimant on an amortization schedule as set out in paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the Fund is fully reimbursed.

(3) Amortization Schedule for Reimbursement to the Produce Recovery Fund and Claimant. Claims of:

(A) $1.00-$5,000--Shall be paid in no more than three monthly installments.

(B) $5,001-$10,000--Shall be paid in no more than six monthly installments.

(C) $10,001-$20,000--Shall be paid in no more than 12 monthly installments.

(D) $20,001-Over--Shall be paid in no more than 24 monthly installments.

(b) Monthly installments to the Fund are due on the last working day of the month and payable to TDA, P.O. Box 12847, Austin, Texas 78711. The department may make exceptions on payment schedules for good cause shown.

(c) If a licensee, or a person required to be licensed, owes money to the Fund at the time the licensee, or a person required to be licensed, makes a claim against the Fund, the department shall offset the amount owed to the Fund from the amount determined to be payable from the Fund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903420

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §14.21

The amendment to §14.21 is adopted under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903421
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

CHAPTER 16. AQUACULTURE

4 TAC §16.4

The Texas Department of Agriculture (the department) adopts the repeal of §16.4, concerning the Texas shrimp marketing assistance program surcharge, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4442). The repeal is adopted to implement changes made to Texas Agriculture Code, Chapter 47, by House Bill 4593, 81st Legislative Session, 2009 (HB 4593), which eliminated the shrimp marketing assistance program surcharge for shrimp raised in aquaculture facilities, and provides that the shrimp marketing assistance program apply only to wild-caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Texas Parks and Wildlife Department. The repeal eliminates the rule which establishes the shrimp surcharge.

No comments were received on the proposal.

The repeal is adopted under Texas Agriculture Code, §134.014, as amended by House Bill 4593, which eliminates the shrimp marketing surcharge fee and the authority for the department to set such a fee by rule; and §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903453
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER E. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

4 TAC §§17.100, 17.102, 17.104

The Texas Department of Agriculture (the department) adopts amendments to §§17.100, 17.102 and 17.104, concerning the Texas-Israel Exchange (TIE) Research Program, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4443). The amendments are adopted to make these sections conform to new requirements established under Senate Bill 1016 (SB 1016), 81st Legislative Session, 2009, that changed the existing TIE Board to an Advisory Committee.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code (the Code), §45.004, which provides the department with the authority to adopt rules for administration of its duties under Chapter 45, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903454
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §17.200, §17.201

The Texas Department of Agriculture (the department) adopts amendments to §17.200 and §17.201, concerning the Texas

Wine Marketing Assistance Program, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4444). The amendments are adopted to modify §17.200 and §17.201 to conform with changes made by Senate Bill 1016 (SB 1016), 81st Legislature, 2009, which eliminates the existing Wine Marketing Assistance Program Advisory Committee and the existing Wine Industry Development Advisory Committee and creates a new Wine Industry Development and Marketing Advisory Committee. The amendment to §17.200 changes the name and description of the committee. The amendment to §17.201 updates the committee responsibilities.

No comments were received on the proposal.

The amendments to §17.200 and §17.201 are adopted under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its powers and duties under the Code; the Code, §50B.002, which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903457
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

4 TAC §17.400, §17.401

The Texas Department of Agriculture (the department) adopts amendments to §17.400 and §17.401, concerning the shrimp marketing assistance program and advisory committee, without changes to the proposal published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4445). The amendments are adopted to implement changes made to Texas Agriculture Code, Chapter 47 by House Bill 4593, 81st Legislative Session, 2009 (HB 4593, which eliminated the shrimp marketing assistance program surcharge for shrimp raised in aquaculture facilities, and provides that the shrimp marketing assistance program apply only to wild-caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Texas Parks and Wildlife Department. The amendments to §17.400 eliminate the definition of "Aquaculture" and modify the definition of "Texas-produced shrimp" to make it consistent with the definition in HB 4593. The amendments to §17.401 add "wild-caught shrimp" throughout the section and eliminate the member of the Texas shrimp aquaculture industry from the advisory committee.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code (the Code), §47.052, which provides the department with the authority to adopt rules for administration of the shrimp marketing program; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903458
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

CHAPTER 23. ROSE GRADING

4 TAC §23.1, §23.2

The Texas Department of Agriculture (the department) adopts amendments to §23.1 and §23.2, concerning rose grading, without changes to the proposal published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4241). The amendments are adopted due to the passage of Senate Bill 1016 (SB 1016) during the 81st Legislative Session, 2009. The issuance of a certificate of authority to rose graders by the department was eliminated under SB 1016. Under the adopted rule, the need for defining the certificate of authority under §23.1(2) is no longer required. For the same reason, obtaining a certificate of authority under §23.2(a), and the need for an application form to apply for or renew a certificate of authority under §23.2(b) are no longer necessary. The sections are amended accordingly.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §121.007, which authorizes the department to adopt rules as necessary concerning rose grading, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903365
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL

SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.6

The Prescribed Burning Board (the Board) adopts amendments to Chapter 227, §227.6, concerning categories for certification as a certified prescribed burn manager, with changes to the proposal published in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2649). The amendments are adopted to make the section consistent with categories for certification approved by the Board and already being implemented by the Texas Department of Agriculture (department), as administrator of the prescribed burning certification program. The amendments also modify existing language in §227.6(b) regarding the regional certification of certified prescribed burn managers, also to be consistent with Board action. The amendments to §227.6 add existing categories of certification for a commercial and private certified prescribed burn manager, and provide eligibility requirements for each category. The amendment to subsection (b) clarifies the language and clarifies that certified prescribed burn managers are certified on an eco-region basis. Section 227.6(a) is adopted with a change made by the Board to clarify that a certified commercial prescribed burn manager may burn on any property, including that of his or her employer, as long as the burn manager is certified to burn in the eco-region in which the employer's property is located and has insurance to cover that property. This change makes the description of the commercial certified burn manager consistent with the terms of the existing commercial certification, as was intended by the Board. Section 227.6(a) is adopted by the Board with a change, made at the request of department staff, to provide that an employee qualifying under the private certified burn manager category may use the insurance policy of his or her employer as long as the policy specifically covers employees of the policy holder. This change is made to make this section consistent with current agency practice and experience in working with insurance policies and agents.

No public comments were received on the proposal.

The amendments are adopted under the Natural Resources Code, §153.046, which provides the Board with the authority to establish standards for prescribed burning, and standards for certification, recertification, and training for prescribed burn managers; and §153.041 of the Natural Resources Code, which authorizes the Board to be established within the department and to administer the prescribed burn manager certification program.

§227.6. Categories of Certification.

(a) Prescribed burn managers may be certified in one of the following two categories:

(1) Commercial Certified Prescribed Burn Manager. A commercial certified prescribed burn manager may conduct prescribed burns for hire on any property allowed by his or her certification, including that of his or her employer, and covered by the required insurance policy as set forth in subparagraph (B) of this paragraph. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Title 4 TAC, Part 13, Chapter 228 of the Prescribed Burning Board's rules.

(B) carry or be covered by a general liability insurance policy in the amount of $1 million per occurrence, and $2 million aggregate, that:

(i) insures the applicant for damages to persons or property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the commercial certified prescribed burn manager's activities at any location within a designated burn eco-region in the state of Texas where the commercial certified prescribed burn manager is authorized to burn; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(2) Private Certified Prescribed Burn Manager. A private certified prescribed burn manager conducts prescribed burns on property owned by, leased by, or occupied by the private certified prescribed burn manager or that person's employer. An employee qualifies as a private certified prescribed burn manager only if he or she is employed to perform other duties related to the operation and provides labor for the prescribed burning activities, but does not provide the necessary equipment. To obtain certification, an applicant must:

(A) meet training and experience requirements as required by Title 4 TAC, Part 13, Chapter 228, of the Prescribed Burning Board's rules;

(B) carry or be covered by a general liability insurance policy, in the amount of $1 million per occurrence, and $2 million aggregate, that:

(i) insures the private certified prescribed burn manager for damages to any persons or any property occurring as a result of prescribed burning activities conducted under Natural Resources Code, Chapter 153, and the rules adopted thereunder; and

(ii) covers the private certified prescribed burn manager's activities on property owned by, leased by, or occupied by the private certified prescribed burn manager, or property owned by, leased by, or occupied by his or her employer. An employee qualifying under this category may use the insurance policy of his or her employer as long as the policy specifically covers employees of the policy holder; and

(C) meet all qualifications required under Natural Resources Code, Chapter 153 and the rules adopted thereunder, including continuing education and insurance verification requirements.

(b) A certified prescribed burn manager shall be certified to conduct burn activities based on the ecoregion of Texas in which the certified prescribed burn manager has been trained to conduct prescribed burns.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 4, 2009.

TRD-200903346

Dolores Alvarado Hibbs
General Counsel, Texas Department of Agriculture
Prescribed Burning Board
Effective date: August 24, 2009
Proposal publication date: May 1, 2009
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT
SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.86

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §1.86, concerning standards for accreditation of libraries operated by public school districts, institutions of higher education, or units of state or local government, without changes to the proposal as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4241).

The 81st Legislature approved new statutory language (House Bill 3756) authorizing additional types of libraries to join a system, and streamlining the statutory requirements for certain non-public libraries to join a system. The changes were numerous and require repeal of the existing rule and adoption of a new rule. It also added new language to address types of libraries not originally included in the rule. The agency therefore adopts the repeal of the existing rule and, in a separate action, adopts a new §1.86.

No comments were received regarding the proposed repeal.

The repeal is adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, and §441.136 that authorizes the director and librarian to adopt rules necessary for the administration of the program.

The repeal affects Government Code §441.123 and §441.136.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903456
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 30, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-5459

♦ ♦ ♦

13 TAC §1.86

The Texas State Library and Archives Commission adopts new 13 TAC §1.86, concerning standards for accreditation of libraries operated by public school districts, institutions of higher education, units of local, state, or federal government, accredited non-public elementary or secondary schools, or special or research libraries, with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4242). The changes are in paragraph (1) to clarify that libraries must apply annually for membership.

This section establishes the standards for accreditation of certain non-public libraries in the state library system.

One comment was received regarding the proposed new section.

Comment: One person commented that they were "astonished to see that there was no cost associated with opening up membership to potentially thousands of additional libraries at either the state or local level. Really??? Surely providing additional services to so many additional libraries has costs associated with it."

Agency response: The preamble to the proposed new rule states that the agency "has determined that for each year of the first five years after the new section is in effect, there will be no fiscal implications for state or local governments." The decision to extend membership to other types of libraries is voluntary and will be made by each system individually. The funding for the system program is federal funding, meant to benefit all types of libraries. There is no additional cost to state or local government, as the system members will determine if they wish to bring other types of libraries into regional cooperative services.

This new section is adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The new section affects Government Code §441.123 and §441.136.

§1.86. Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, Units of Local, State, or Federal Government, Accredited Non-Public Elementary or Secondary Schools, or Special or Research Libraries.

These standards for accreditation apply only to libraries that are operated by a public school district, institution of higher education, unit of local, state, or federal government, accredited non-public elementary or secondary schools, or special or research libraries. The standards for accreditation of public libraries are specified in §1.81 of this title (relating to Quantitative Standards for Accreditation of Library).

(1) Libraries applying for membership must:

(A) agree to loan materials without charge to users of other libraries in the system; and

(B) submit an annual application for membership to the State Library by April 30.

(2) Any library eligible for membership in the Texas Library System under this section will be accredited by the following standards.

(A) For libraries operated by a public school district:

(i) the unit of membership shall be the school district;

(ii) the district must submit written verification that it is academically accredited by the Texas Education Agency.

(B) For libraries operated by an institution of higher education:

(i) the unit of membership in the Texas Library System shall be the institution. Institutions of higher education with libraries in multiple locations shall apply as a single unit. Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Government Code §61.063;

(ii) the institution must submit written verification that it is accredited by an accrediting agency recognized by the Texas Higher Education Coordinating Board.

(C) For libraries operated by a unit of local, state, or federal government, the library must:

(i) submit written verification from the governmental unit that it is operated by that governmental unit;

(ii) submit documentation showing that there is an organized collection, with staff, and regular hours of operation.

(D) For libraries operated by accredited non-public elementary or secondary schools:

(i) the unit of membership shall be the accredited organization;

(ii) the library must submit written documentation of its accreditation.

(E) For libraries operated by special or research organizations the library must:

(i) submit written verification from the organization that it is supported by that organization;

(ii) submit documentation showing that there is an organized collection, with staff, and regular hours of operation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903459
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 30, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-5459

♦ ♦ ♦

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.6

The Texas State Library and Archives Commission adopts amendments to 13 TAC §2.6, relating to Sunset dates for advisory committees, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4243).

The amendments are adopted to update the Sunset dates for advisory committees, and delete a committee that was abolished by a recent statute.

No comments were received regarding the proposed amendments.

The amendments are adopted under Government Code §2110.008, that requires the commission to adopt Sunset dates for advisory committees and §441.006(a) that provides the commission with authority to govern the Texas State Library.

The amendments affect Government Code §441.006 and §2110.008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903455
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 30, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-5459

♦ ♦ ♦

SUBCHAPTER C. GRANT POLICIES
DIVISION 2. NEGOTIATED GRANTS

13 TAC §2.213

The Texas State Library and Archives Commission adopts new 13 TAC §2.213, concerning system integrated negotiated grants, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4243).

This section establishes the goals and purposes, eligible applicants, criteria for grant awards, and eligible expenses for a new grant program, the system negotiated grants (SyNG). This section will enable the agency to administer the new funding that the Legislature has appropriated for state fiscal years 2010 and 2011.

No comments were received regarding the proposed new section.

This new section is adopted under the authority of Government Code §441.135 that authorizes a program of grants and §441.137 of the Library Systems Act that stipulates that the director and librarian shall administer the program of state grants and shall make public the rules adopted by the commission.

The adopted new section affects Government Code §441.135 and §441.137.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903460

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: August 30, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 463-5459

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §36.1, relating to the possession and sale of firearms on a licensed premise, without changes to the proposed text as published in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3488). The rule will not be republished.

The adopted amendment clarifies that a permit or license holder may possess a firearm on the licensed premise, and possession by the permit or license holder is not limited to a firearm that is disabled and for ceremonial or display purposes only.

The adopted amendment adds an additional class of persons that may possess a firearm on a licensed premise. This additional class of person may only possess a firearm that is disabled and possessed for ceremonial or display purposes at a charitable fundraiser. While on the licensed premise, the firearm must remain in the possession, control, or supervision of a person acting on behalf of a charitable organization sponsoring the fundraiser.

No comments were received as a result of publication of the proposed rule.

The amendment is adopted under the Texas Alcoholic Beverage Code, §§11.61(f), 61.71(g) and 5.31. Section 11.61(f) and §61.71(g) relate to possession of firearms in a building on a licensed premise, and provide the commission with specific authority to adopt this rule. Section 5.31 provides the commission with general authority to prescribe and publish rules necessary to carry out the provisions of the code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903404
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 26, 2009
Proposal publication date: June 5, 2009
For further information, please call: (512) 206-3204

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §1.16, concerning contracts for materials and services, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4244).

Specifically, this amendment will provide that, in the event the Board or the Agency Operations Committee, as applicable, has approved a request for the purchase of materials or services that will result in multiple contracts, any contract of which by itself shall have a cost greater than $100,000 must be approved by the Chair and Vice Chair of the Board. The Commissioner or the Deputy Commissioner for Business and Finance/Chief Operating Officer, in accordance with §1.16(c), shall provide final approval of such contracts if the amount of the contract is less than or equal to $100,000.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with the authority to make rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903369
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §1.19

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §1.19, concerning General Provisions, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3584).

Specifically, the new section would establish procedures concerning professional development through education and training for agency administrators and employees. In order for an agency to provide training and education to its employees, it must adopt rules allowing same. Section 656.048 of the Government Code directs that: "(a) A state agency shall adopt rules relating to: (1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and (2) the obligations assumed by the administrators and employees on receiving the training and education."

There were no comments received regarding this new section.

The new section is adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general

rule making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903370
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 12, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER M. NOTICE REGARDING THE AVAILABILITY OF HIGHER EDUCATION TEXTBOOKS THROUGH MULTIPLE RETAILERS

19 TAC §§4.215 - 4.218

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§4.215 - 4.218, concerning Notice to Students Regarding the Availability of Higher Education Textbooks through Multiple Retailers, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4245).

Specifically, resulting from House Bill 1096 of the 81st Legislature (Texas Education Code §51.9705), these new sections would require each public institution of higher education to establish a procedure by which each institution of higher education shall provide to each student enrolled at the institution written notice of the availability of required or recommended textbooks through university-affiliated bookstores and through retailers other than university-affiliated bookstores. These new sections describe the timeframe during which an institution shall provide notification.

There were no comments received regarding these new sections.

The new sections are adopted under the Texas Education Code, §51.9705.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903371
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board adopts an amendment to §5.5, concerning rules applying to the automatic admission of certain high school graduates to public universities, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4246).

Specifically, in compliance with Senate Bill 175, 81st Texas Legislature, the proposed amendments places limits on the percentage of applicants in the top 10 percent of their high school classes in one of the two preceding school years to whom the University of Texas at Austin is required to offer admission.

There were no comments received concerning the amendment.

The amendment is adopted under the Texas Education Code, §51.803(a-1) - (a-5).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903372
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.24

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §5.24, concerning Criteria and Approval of Mission Statements and Tables of Programs, with changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2736).

Specifically, this amendment authorizes the elimination of preliminary authority for programs that meet the following criteria: (a) the program has institutional and Board of Regents approval; (b) the program is a non-doctoral program; (c) the program is

a non-engineering program; and (d) the program would be offered by a university or health-related institution. The amendment would also permit the Commissioner of Higher Education to approve doctoral-level preliminary authority requests.

The following comments were received regarding the amendment:

Comment: A comment was received from Texas State University, asking that the rule include a provision for appealing the Commissioner's decision to the Board.

Response: Staff concurred with this comment and added a new §5.24(c)(6).

The amendment is adopted under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

§5.24. Criteria and Approval of Mission Statements and Tables of Programs.

(a) In reviewing a request for preliminary authority to add a program (baccalaureate, master's, and doctoral) to the institution's Table of Programs, the Commissioner shall consider:

(1) a demonstrated need for a future program in terms of present and future vocational needs of the state and the nation;

(2) whether the proposed addition would complement and strengthen existing programs at the institution;

(3) whether a future program would unnecessarily duplicate other programs within the region, state, or nation; and

(4) whether a critical mass of students and faculty is likely to be available to allow the program to be offered at a high level of quality and to become self-sufficient on the basis of state funding.

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Commissioner shall consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) a demonstrated regional, state, or national unmet need for doctoral graduates in the field, or an unmet need for a doctoral program with a unique approach to the field;

(2) evidence that existing doctoral programs in the state cannot accommodate additional students (or accessibility to these programs is restricted), or that expanding existing programs is not feasible or would not best serve the state;

(3) if appropriate to the discipline, the institution has self-sustaining baccalaureate- and master's-level programs in the field and/or programs in related and supporting areas;

(4) the program has the potential to obtain state or national prominence and the institution has the demonstrable capacity, or is uniquely suited, to offer the program and achieve that targeted prominence;

(5) demonstrated current excellence of the institution's existing undergraduate and graduate degree programs and how this excellence shall be maintained with the development and addition of a high quality doctoral program; measures of excellence include the number of graduates and graduation rates that match or exceed those at peer institutions;

(6) satisfactory placement rates for graduates of the institution's current doctoral programs, with comparison to peer group placement rates when available;

(7) how the program will address Closing The Gaps by 2015;

(8) institutional resources to develop and sustain a high-quality program; and

(9) where appropriate, a demonstration of plans for external accreditation, licensing, or other applicable professional recognition of the program.

(c) Review and Approval Process.

(1) As provided by Texas Education Code, §61.051(e), at least every four years the Board shall review the role and mission statements, the table of programs and all degree and certificate programs offered by each public senior university or health related institution. Requests for preliminary authority for new degree programs shall be presented as part of this review. The review shall include the participation of the institution's board of regents.

(2) The review process shall be determined by the Commissioner, but shall include a review of low-producing degree programs at the institution.

(3) The Board shall approve or re-approve the mission statement. Each institution shall be given an opportunity to be heard by the Board about these matters.

(4) Preliminary authority is not required if a degree program meets all of the following conditions:

(A) The program has institutional and Board of Regents approval.

(B) The program is a non-doctoral program.

(C) The program is a non-engineering program (i.e., not classified under CIP code 14).

(D) The program would be offered by a university or health-related institution.

(5) All other requests for preliminary authority shall be made using the standard preliminary authority request form and shall be approved or denied by the Commissioner.

(6) An institution may appeal decisions regarding preliminary authority to the Board at one of its quarterly meetings.

(7) Outside the normal review process described in paragraph (1) of this subsection, an institution may request of the Board an amendment to its authorized role and mission and/or preliminary authority for additional degree programs at any time the Commissioner determines that compelling circumstances warrant.

(8) After approval or re-approval, requests for new programs and administrative changes shall be considered in the context of the approved role and mission for the institution.

(9) The Commissioner may approve minor changes to the mission statement of an institution during the period between the reviews referenced in paragraph (1) of this subsection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903373

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

19 TAC §5.44

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.44, concerning Presentation of Requests and Steps for Implementation, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2737).

Specifically, the amendments to §5.44(a) modify the approval process for new bachelor's and master's programs. Approval of new bachelor's and master's programs would be automatic if they meet the following criteria: (a) the program has institutional and Board of Regents approval; (b) the institution certifies compliance with the Standards for New Bachelor's and Master's Programs developed by the Coordinating Board; (c) the institution certifies that adequate funds are available to cover the costs of the program; (d) new costs during the first five years of the program would not exceed $2,000,000; (e) the program is a non-engineering program (i.e., not classified under CIP code 14); (f) the program would be offered by a university or health-related institution; and (g) no objections to the proposed program are received by the Coordinating Board during the 30-day public comment period. The amendments to §5.44(b) clarify the approval process for new undergraduate and graduate certificate programs. Approval would be automatic if a new certificate program meets the following criteria: (a) the certificate program has institutional and Board of Regents approval; (b) the institution certifies that adequate funds are available to cover the costs of the program; (c) the certificate programs meets all other criteria in §5.48; and (d) no objections to the proposed certificate program are received by the Coordinating Board during the 30-day public comment period. The amendments to §5.44(c) clarify the approval process for changes in the administrative structure of an institution of higher education. Approval would be automatic if a an administrative change meets the following criteria: (a) the administrative change has institutional and Board of Regents approval; (b) the institution certifies that adequate funds are available to cover the costs of the administrative change; (c) new costs during the first five years would not exceed $2,000,000; (d) the administrative change meets all other criteria in §5.47; and (e) no objections to the proposed administrative change are received by the Coordinating Board during the 30-day public comment period.

There were no comments received regarding these amendments however, at the July 30, 2009 Coordinating Board meeting, the Board voted to remove "and/or Selected Public Colleges" from Chapter 5 and Subchapter C titles.

The amendments are adopted under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903374
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §5.52

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §5.52, concerning Assessment of Existing Degree Programs, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2739).

Specifically, new §5.52(a) would require each public institution of higher education to have a process to assess the quality and effectiveness of existing degree programs for continuous improvement and §5.52(b) would authorize the Coordinating Board staff to develop a process for conducting a periodic audit of the quality and effectiveness of existing bachelor's and master's programs at public institutions of higher education.

There were no comments received regarding this new section however at the July 30, 2009 Coordinating Board meeting, the Board voted to remove "and/or Selected Public Colleges" from Chapter 5 and Subchapter C titles.

The new section is adopted under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903375
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER D. OPERATION OF OFF-CAMPUS EDUCATIONAL UNITS OF PUBLIC SENIOR COLLEGES, UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS

19 TAC §5.78

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §5.78, concerning Supply/Demand Pathway, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2740).

Specifically, this amendment would change the requirement of an off-campus educational unit on the Supply/Demand Pathway of attaining full-time equivalent enrollments of 3,500 from four fall semesters to one semester to become eligible to be a stand-alone institution.

There were no comments received regarding this amendment.

The amendment is adopted under the Texas Education Code, Chapter 61 which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903376
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER F. FORMULA FUNDING AND TUITION CHARGES FOR REPEATED AND EXCESS HOURS OF UNDERGRADUATE STUDENTS

19 TAC §13.104

The Texas Higher Education Coordinating Board adopts an amendment to §13.104, concerning rules applying to formula funding and tuition charges for repeated and excess hours of undergraduate students, with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4248).

Specifically, in compliance with House Bill 101, 81st Texas Legislature, the amendments relate to those hours not subject to the limitation on formula funding set out in §13.103 of the same subchapter and would include hours earned before receiving an associate's degree, dual credit course hours for which the student received credit toward a high school diploma, and semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements.

No comments were received concerning the amendment; however, after the proposed amendment was filed with the *Texas Register,* Governor Perry vetoed Senate Bill 1343. The rules in §13.104(1) were changed to remove the exemption of hours earned before receiving an associate degree.

The amendment is adopted under the Texas Education Code, §61.0595(d).

§13.104. Exemptions for Excess Hours.

The following types of hours are exempt and are not subject to the limitation on formula funding set out in §13.103 of this title (relating to Limitation on Formula Funding for Excess Hours):

(1) hours earned by the student before receiving a bachelor's degree that has been previously awarded to the student;

(2) hours earned through examination or similar method without registering for a course;

(3) hours from remedial and developmental courses, workforce education courses, or other courses that would not generate academic credit that could be applied to a degree at the institution if the course work is within the 27-hour limit at two-year colleges and the 18-hour limit at general academic institutions;

(4) hours earned by the student at a private institution or an out-of-state institution;

(5) hours not eligible for formula funding; and

(6) semester credit hours earned by the student before graduating from high school and used to satisfy high school graduation requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903377
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER G. RESEARCH DEVELOPMENT FUND

19 TAC §§13.120 - 13.125

The Texas Higher Education Coordinating Board adopts amendments to §§13.120 - 13.125, concerning Research Development Fund, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2740).

Specifically, the amendments are needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Com-

missioner may require a separate audit to verify the submitted information.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller with verified information regarding the apportionment of the funds to each eligible institution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903378
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§13.126 - 13.130

The Texas Higher Education Coordinating Board adopts the repeal of §§13.126 - 13.130, concerning the Research Development Fund, without changes to the proposal as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2743).

Specifically, the repeal is needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Commissioner may require a separate audit to verify the submitted information.

There were no comments received regarding the repeal of these rules.

The repeal is adopted under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller of Public Accounts with verified information regarding the apportionment of the funds to each eligible institution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903380
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §13.126, §13.127

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §13.126 and §13.127, concerning Research Development Fund, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2743).

Specifically, the new sections are needed to streamline and clarify existing rules and to establish new auditing rules. The Restricted Research Review Panel (Review Panel), consisting of representatives from Research Development Fund eligible institutions, would evaluate all restricted research projects, activities, and awards. Current rules provide review for only projects with awards of greater than $250,000. The Review Panel would make a determination on each research award to determine if it should be classified as restricted research. Each institution receiving research development funds would be required to audit the classified awards to ensure that the restricted research awards and related expenditures were properly classified. The audit report would be required and included as part of the annual financial report. The audit report would also include a description of how the restricted research funds were spent. The Commissioner may require a separate audit to verify the submitted information.

There were no comments received regarding these new sections.

The new sections are adopted under the Texas Education Code, Chapter 62, Subchapter E, which creates the Research Development Fund and provides the Coordinating Board with the authority to create the standards and accounting methods for determining the amount of restricted research funds expended by each eligible institution per year, convening a committee to approve those methods, and providing the Comptroller of Public Accounts with verified information regarding the apportionment of the funds to each eligible institution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903379

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§13.200 - 13.202, concerning the Engineering Summer Program, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4249).

Specifically these rules describe the Engineering Summer Program (ESP) grant program, including the establishment of eligibility for the Texas general academic institutions and identifying student populations that are encouraged to participate. The new language for these sections align the rules with the statute to clarify that all eligible institutions may receive funding, and amends existing rules to comply with statute by using the term "Engineering Summer Program" instead of "Engineering Summer Camp." The new language incorporates a change from House Bill 2425 that allows participation of private or independent institutions of higher education that offer an engineering degree program.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, §61.791(b), which requires the Coordinating Board to establish rules for the ESP program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903381
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 14. RESEARCH FUNDING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §14.1, §14.2

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §14.1 and §14.2, concerning the General Provisions of the Research Funding Programs, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4250).

Specifically these sections describe the administration of the Norman Hackerman Advanced Research Program, including the establishment of eligibility for Texas higher education institutions. The new language renames the program to the Norman Hackerman Advanced Research Program (NHARP) to reflect the Board's October 2007 decision.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, §61.027, which requires the Coordinating Board to establish rules for the Norman Hackerman Advanced Research Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903382
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER B. NORMAN HACKERMAN ADVANCED RESEARCH PROGRAM

19 TAC §14.11, §14.12

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §14.11 and §14.12, concerning the Norman Hackerman Advanced Research Program, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4251).

Specifically the amendments to these sections describe the administration of the Norman Hackerman Advanced Research Program, including the establishment of eligibility for Texas higher education institutions. The new language in these sections incorporate language from House Bill 58, 81st Texas Legislature to allow participation of eligible Texas independent institutions of higher education to compete for funding. The new language also incorporates the language of Senate Bill 44, 81st Texas Legislature that requires student participation in the funded projects.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, §61.027, which requires the Coordinating Board to establish rules for the Norman Hackerman Advanced Research Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903383

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 17. RESOURCE PLANNING
SUBCHAPTER B. BOARD APPROVAL

19 TAC §17.11, §17.14

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.11(1) and (2), concerning rules applying to projects exempt from Board approval, and §17.14(c), concerning rules applying to re-approval of projects, without changes to the proposed text as published in the June 12, 2009, issue of the *Texas Register* (34 TexReg 3585).

Specifically, in compliance with Senate Bill 1796, 81st Texas Legislature, the proposed amendments increase the threshold for projects that are exempt from Board approval to $4 million for both new construction and repair and renovation projects. In addition the amendments exempt projects previously approved by the Board under $4 million from having to seek re-approval as required by §17.14(a).

There were no comments received concerning the amendments.

The amendments are adopted under the Texas Education Code, §61.058(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903384
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 12, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.9

The Texas Higher Education Coordinating Board adopts new §21.9, concerning General Provisions, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2745).

Specifically, the new section establishes procedures by which tuition set-aside funds may be collected for the Texas B-On-Time Loan Program, as required by Texas Education Code §56.465.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903388
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.29

The Texas Higher Education Coordinating Board adopts amendments to §21.29, concerning the Determination of Resident Status and Waiver Programs for Certain Nonresident Persons, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4251).

Specifically, the amendments to §21.29(4) reflect that a waiver from nonresident tuition for persons receiving certain competitive scholarships is an option and no longer a requirement for institutions. The amendments also indicate persons awarded scholarships prior to fall 2009 with the understanding of also receiving a waiver of nonresident tuition are entitled to that waiver and may continue to receive waivers through August 1, 2014, if they continue to receive competitive scholarships and continue to be enrolled in the same certificate or degree programs. These amendments implement provisions in House Bill 4244, 81st Texas Legislature. The amendments to §21.29(10) reflect the provisions of a new waiver of nonresident tuition for veterans eligible for federal veterans' benefits, and their spouses and children (including stepchildren). To qualify, they must provide their institutions letters of intent to establish residence in Texas and must reside in the state while attending college. Unless extended by hardship conditions, a child's eligibility to use the waiver ends at age 25. These amendments implement provisions in Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903389

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§21.121, 21.126, 21.131

The Texas Higher Education Coordinating Board adopts amendments to §§21.121, 21.126 and 21.131, concerning the Texas B-On-Time Loan Program, without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2746).

Specifically, the amendment to §21.121 corrects the citation of the authority for the program. Section 21.126(a) references loans disbursed from the proceeds of tax-exempt bonds. This reference specifically applies to the institution certification requirement in §21.126(a)(1). The requirements in §21.126(a)(2) through (5) are relevant to all BOT loans, regardless of the funding source. The amendment moves the tax-exempt bond reference from §21.126(a) to §21.126(a)(1) for clarification. Section 21.126(a)(2) states that a student must submit an application containing the names of two personal references who are gainfully employed. The purpose of providing references on loan applications is to assist Board staff in locating borrowers. The employment status of a reference does not have a bearing on the reference's knowledge of the borrower's whereabouts, and thus this requirement is not useful. The amendment removes this requirement. Section 21.131 states that each payment received from the borrower will be applied first to any outstanding late charges and collection costs that may have accrued to the account and next to principal of the earliest dated note in the account. The implementation of the Higher Education Loan Management System (HELMS) required a change in the application of loan payments. Although payments continue to be applied first to any outstanding late charges and collection costs, they are then proportionately applied to the principal of each note rather than the earliest dated note. The amendment is consistent with the current method of payment application and in line with the rules describing the application of payments for loans administered through the Hinson-Hazlewood College Student Loan Program.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903390
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1081, 21.1083, 21.1084

The Texas Higher Education Coordinating Board adopts amendments to §§21.1081, 21.1083, and 21.1084, concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4252).

Specifically, the amendments to §21.1081 clarify that program officers are to determine student eligibility. This is a new requirement for the institutions, mandated by Senate Bill 1798, 81st Texas Legislature. The amendment to §21.1083 adds the requirement that an otherwise eligible applicant must submit his or her completed application to the institution by the end of a given term in order to be entitled to an award. The amendments to §21.1084(b)(3), (c) and (d) clarify that, as mandated by Senate Bill 1798, 81st Texas Legislature, the institution is to determine student eligibility rather than forward applications to the Coordinating Board for processing. The amendment to §21.1084(e) reflects that the institution shall determine student eligibility and notify students and school districts of their awards. The Coordinating Board will no longer have the information to post awards on its web site.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §54.214.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903391
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.1085 - 21.1090

The Texas Higher Education Coordinating Board adopts the repeal of §§21.1085 - 21.1090, concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4253).

Specifically, §21.1085 is repealed in order to delete references to considerations if funding is limited. Since colleges will be determining student eligibility in the future, these procedures for the Coordinating Board will not be applicable. In addition, funding has never been limited and is not expected to be so in the future. The repeal of §21.1085 necessitates the repeal of §§21.1086 - 21.1090.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §54.214.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903392
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.1085 - 21.1089

The Texas Higher Education Coordinating Board adopts new §§21.1085 - 21.1089, concerning the Educational Aide Exemption Program, without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4254).

Specifically, the repeal of §21.1085 necessitates the adoption of new §§21.1085 - 21.1089. The new sections clarifies that institutions cannot make spring awards or request reimbursements for them unless they have proof the recipient is still employed by their school district. The new sections clarify that the Coordinating Board will notify institutions and school districts of the availability of funds for summer awards. It will not notify current year recipients since it will no longer have current year recipient information.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §54.214.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903393
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100 - 21.2102

The Texas Higher Education Coordinating Board adopts amendments to §§21.2100 - 21.2102, concerning the Exemption Program for Veterans and Their Dependents (Hazlewood Act). Sections 21.2100 and 21.2101 are adopted without changes. Section 21.2102 is adopted with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4255).

Specifically, the amendments remove the definition of "citizen of Texas," as that term is no longer relevant; define new terms to reflect statutory changes; and expand the definition for programs having "extraordinary costs" to reflect the passage of Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature. This change allows public technical and state colleges, as well as public junior colleges, to charge students the costs associated with operating these higher cost programs. The amendments also clarify the types and amounts of charges that may be exempted and reflect that, in certain cases, veterans' spouses may be eligible for an exemption. Subsections have been renumbered as appropriate.

The following comments were received regarding the amendments:

Comment: Chris Faurie commented that Chapter 35 of the United States Code should be excluded from the list of federal education benefits for the military that should be considered when determining eligibility for both federal and state benefits, as Chapter 35 is not solely dedicated to the payment of tuition and fees.

Response: The Board agreed and §21.2102(3) was amended to clarify that the only types of federal education benefits that should be considered when determining a student's eligibility to receive both federal and state benefits during the same semester are those issued under Title 38, United States Code, Chapter 33. References to other chapters of the United States Code are deleted.

Comment: Chris Faurie recommended that a change be made to address the potential for dual Hazlewood eligibility for certain children who qualify as children of veterans who are deceased or disabled and who also qualify under the new "Legacy" provision.

Response: The Board noted that the intent of the law is to provide no more than 150 hours of benefit to an individual, so no change is needed.

The amendments are adopted under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) at the time he or she entered the service, was a resident of Texas, entered the service in the State of Texas, or declared Texas as his or her home of record in the manner provided by the military or other service;

(2) was honorably discharged from service;

(3) has no federal veteran's education benefits, or, if he or she has such benefits, that the value of the benefits that may be used only for the payment of tuition and fees for the semester, including such benefits as those issued under Title 38, United States Code, Chapter 33, is less than the value of the student's tuition, fees, and other required charges, less deposit and student service fees for the relevant term;

(4) is not in default on an education loan made or guaranteed by the State of Texas and is not in default on a federal loan if that default is the reason the student cannot use his or her federal veterans' benefits;

(5) has attempted fewer than 150 credit hours using the Hazlewood Act Exemption beginning with fall of 1995;

(6) has followed the application procedures and schedules required by these provisions; and

(7) belongs to one of the following groups of individuals:

(A) nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(B) nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that he be discharged from service;

(C) honorably discharged men and women of the armed forces of the United States who served during the Korean War which began on June 27, 1950, and ended on July 27, 1953; and

(D) all persons who:

(i) were honorably discharged from the armed forces of the United States after serving on active military duty for at least 181 days, excluding training; and

(ii) who served a portion of their active duty during:

(I) the Cold War which began on June 27, 1950;

(II) the Vietnam era which began on December 21, 1961, and ended on May 7, 1975;

(III) the Grenada and Lebanon era which began on August 24, 1982, and ended on July 31, 1984;

(IV) the Panama era which began on December 20, 1989, and ended on January 21, 1990;

(V) the Persian Gulf War which began on August 2, 1990, and ended on March 3, 1991;

(VI) the National Emergency by Reason of Certain Terrorist Attacks, which began on September 11, 2001; and

(VII) any future national emergency declared in accordance with federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903394

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 26, 2009

Proposal publication date: June 26, 2009

For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.2103 - 21.2108

The Texas Higher Education Coordinating Board adopts the repeal of §§21.2103 - 21.2108, concerning the Exemption Program for Veterans and Their Dependents (Hazlewood Act), without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4257).

Specifically, these sections are proposed for repeal due to the creation of new §§21.2103 - 21.2111.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903395

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 26, 2009

Proposal publication date: June 26, 2009

For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§21.2103 - 21.2111

The Texas Higher Education Coordinating Board adopts new §§21.2103 - 21.2111, concerning the Exemption Program for Veterans and Their Dependents (Hazlewood Act) without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4257).

Specifically, the new sections add eligibility requirements for certain veterans' spouses and reflect expanded eligibility for veterans who entered the service in Texas or declared Texas as their home of record. The new sections add procedures for veterans who wish to assign their unused hours to a child and for a new tuition exemption for children of service members who are deployed overseas. The new sections implement provisions of Senate Bill 93, Senate Bill 297, and Senate Bill 847, 81st Texas Legislature.

No comments were received regarding the new sections.

The new sections are adopted under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt rules necessary to administer Texas Education Code, Chapter 54, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903396
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.21, 22.22, 22.24

The Texas Higher Education Coordinating Board adopts amendments to §§22.21, 22.22 and 22.24, concerning the Tuition Equalization Grant Program. Sections 22.21 and 22.24 are adopted without changes. Section 22.22 is adopted with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4260).

Specifically, the amendments to §22.21 eliminate redundant language and clarify that Tuition Equalizations Grants are for students attending private or independent Texas colleges or universities. Amendments to §22.22 clarify that the definitions for enrollment on at least a half-time basis and full-time enrollment pertain to a semester or term, and not to a full academic year. The amendment to the definition of "Program Officer" clarifies the duties of that position. The amendment to the definition of "Resident of Texas" corrects the title of Chapter 21, Subchapter B, of Coordinating Board rules. A definition of three-fourths-time enrollment is added, as required by the passage of House Bill 4476, 81st Texas Legislature. The amendments to §22.24 are mandated by House Bill 4476, 81st Texas Legislature, and reflect the changes to the enrollment requirements for students enrolled for the 2009-2010 academic year and later, from full-time enrollment to three-fourths-time enrollment. Section 22.24(3)(A) - (C), dealing with eligibility for continuation awards and grade-point-average calculations, is deleted.

The following comments were received regarding the amendments:

Comments: Staff noticed that a definition of "academic year" should be added to §22.22, as this term is used throughout the rules. Subsequent definitions were renumbered.

Response: The Board agreed with and adopted the additional amendments.

The amendments are adopted under the Texas Education Code, §51.969, which provides the Coordinating Board with the authority to adopt any rules necessary to administer this section.

§22.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic year--A twelve-month period designated by an eligible institution.

(2) Awarded--Offered to a student.

(3) Board--The Texas Higher Education Coordinating Board.

(4) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(5) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(6) Degree or certificate program of four years or less--A baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(7) Degree or certificate program more than four years--A baccalaureate degree or certificate program in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(8) Disbursement date--The date on which the Board generates a voucher requesting a grant disbursement for an institution.

(9) Exceptional financial need--The need an undergraduate student has if his or her expected family contribution is less than or equal to $1000.

(10) Enrollment on at least a half-time basis--For undergraduate students, enrolled for the equivalent of six or more semester credit hours per semester or term. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours per semester or term.

(11) Enrollment on at least a three-fourths basis--For undergraduate students, enrolled for the equivalent of nine or more semester credit hours per semester or term. For graduate students, enrolled for the equivalent of six or more semester credit hours per semester or term.

(12) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(13) Full-time enrollment--For undergraduate students, enrollment for the equivalent of twelve or more semester credit hours per semester or term. For graduate students, enrollment for the equivalent of nine or more semester credit hours per semester or term.

(14) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(15) Graduate student--A student who has been awarded a baccalaureate degree.

(16) Initial TEG--The first Tuition Equalization Grant ever awarded to a specific student.

(17) Period of enrollment--The term or terms within a state fiscal year (September 1-August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(18) Private or independent institution--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(19) Program or TEG--The Tuition Equalization Grant Program.

(20) Program Maximum--The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).

(21) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the selection of recipients, maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(22) Regular Semester--A fall or spring semester, typically of 16 weeks' duration.

(23) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Residence Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(24) State Fiscal Year--A period of time that begins on September 1 of one calendar year and ends on August 31 of the following calendar year.

(25) Tuition Differential--The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

(26) Tuition Equalization Grant need (TEG need)--The total amount of TEG funds that full-time students at an approved institution would be eligible to receive if the program were fully funded.

(27) Undergraduate student--An individual who has not yet received a baccalaureate degree.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903397
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§22.25 - 22.33

The Texas Higher Education Coordinating Board adopts the repeal of §§22.25 - 22.33, concerning the Tuition Equalization Grant Program without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4262).

Specifically, these sections are proposed for repeal in order to propose new §22.25 and §22.26, which would implement House Bill 4476, 81st Texas Legislature.

No comments were received regarding the repeal.

The repeal is adopted under the Texas Education Code, §51.969, which provides the Coordinating Board with the authority to adopt any rules necessary to administer this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903398
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §§22.25 - 22.35

The Texas Higher Education Coordinating Board adopts new §§22.25 - 22.35, concerning Provisions for the Tuition Equalization Grant Program. Section 22.25 and §22.26 are adopted with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4262). Sections 22.27 - 22.35 are adopted without changes and will not be republished.

Specifically, new §22.25 and §22.26 would implement House Bill 4476, 81st Texas Legislature, which changed the eligibility requirements for students who receive initial awards for academic year 2009-2010 and later. In addition, this bill changes the renewal criteria for students receiving initial awards for the academic year 2008-2009 and later. New §22.25 and §22.26 necessitate new §§22.27 - 22.35. New §22.30 corrects the title due to the fact that there is no longer a campus-based process.

The following comments were received regarding the new sections:

Comments: Staff recommended that the word "first" be deleted from §22.25(b)(1), as it is redundant, given the use of the term "initial award." Staff also recommended revising §22.25(b)(2)(B) to include the requirement for graduate students.

Response: The Board agreed with and adopted the changes to the new sections.

The new sections are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt any rules necessary to administer this section.

§22.25. Satisfactory Academic Progress.

(a) Students who received a TEG award in a state fiscal year prior to 2005-2006 or who were awarded a TEG for the 2005-2006 state fiscal year prior to September 1, 2005, shall meet the academic progress requirements as determined by institutional policies.

(b) Students awarded a TEG award for the 2008-2009 academic year and later shall, unless granted a hardship postponement in accordance with §22.28 of this title (relating to Hardship Provisions for Students Awarded an Initial TEG on or after September 1, 2005):

(1) As of the end of the academic year in which the student receives an initial award, meet the academic progress requirements as determined by institutional policies.

(2) At the end of the year in which the student receives a continuation award:

(A) complete at least 75 percent of the hours attempted in his or her most recent full academic year, as determined by institutional policies;

(B) complete at least:

(i) for undergraduates, 24 semester credit hours in the most recent full academic year;

(ii) for graduate students, 18 semester credit hours in the most recent full academic year; and

(C) maintain an overall grade-point average of at least 2.5 on a four-point scale or its equivalent for all coursework attempted at an institution or private or independent institution.

§22.26. Grade Point Average Calculations.

Grade-point average calculations shall be made in accordance with institutional policies except that if a grant recipient's grade-point average falls below program requirements and the student transfers to another institution, or has transferred from another institution, the receiving institution cannot make a continuation award to the transfer student until he or she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade-point average, including hours and grade points for courses taken at the old and new institutions, that proves the student's overall grade-point average now meets or exceeds program requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903399
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §22.200

The Texas Higher Education Coordinating Board adopts amendments to §22.200, concerning Award Amounts and Notification of Potential Recipients without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2748).

Specifically, this section is renamed to more accurately reflect the purpose of the section. The amendments to §22.200(c) give staff more flexibility in requesting names and addresses of potential scholarship recipients.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903400
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER Q. ENGINEERING SCHOLARSHIP PROGRAM

19 TAC §§22.312, 22.313, 22.315

The Texas Higher Education Coordinating Board adopts amendments to §§22.312, 22.313 and 22.315, concerning the Engineering Scholarship Program without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4264).

Specifically, the amendments to these sections clarify that students attending private or independent institutions of higher education are eligible to participate in the scholarship program, as mandated by House Bill 2425, 81st Texas Legislature.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.792, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §61.792.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903401
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER R. PROVISIONS REGARDING SCHOLARSHIPS TO RELATIVES OF BOARD MEMBERS OF INSTITUTIONS OF HIGHER EDUCATION AND UNIVERSITY SYSTEMS

19 TAC §22.405

The Texas Higher Education Coordinating Board adopts amendments to §22.405, concerning Declaration of Eligibility without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4265).

Specifically, the amendments to §22.405 are a result of the passage of House Bill 4244, 81st Texas Legislature, which mandates that students must certify at some point prior to receiving an institutional scholarship that they are not related to a current member of the governing board of the institution or system. Prior to the passage of House Bill 4244, students were required to make this certification when applying for a scholarship. The amendment will simplify the process for students of applying for institutional scholarships.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §51.969, which provides the Coordinating Board with the authority to adopt any rules necessary to administer this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903402
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER S. PROFESSIONAL NURSING SHORTAGE REDUCTION PROGRAM

19 TAC §§22.501 - 22.505, 22.507, 22.508

The Texas Higher Education Coordinating Board adopts amendments to §§22.501 - 22.505, 22.507 and 22.508, concerning the Professional Nursing Shortage Reduction Program without changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4265).

Specifically, in compliance with House Bill 4471, 81st Texas Legislature, the proposed amendments provide two new funding programs to the Professional Nursing Shortage Reduction Program. Specifically, qualifying institutions may receive advance funding in order to increase their enrollments and graduates.

There were no comments received concerning the amendments.

The amendments are adopted under the Texas Education Code, §§61.9621, 61.96232, 61.96233, and 61.9629.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903387
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518 - 22.523

The Texas Higher Education Coordinating Board adopts new §§22.518 - 22.523, concerning the Exemption Program for Firefighters Enrolled in Fire Science Courses. Section 22.521 is adopted with changes to the proposed text as published in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4266). Sections 22.518 - 22.520, 22.522 and 22.523 are adopted without changes and will not be republished.

Specifically, House Bill 2013, 81st Texas Legislature, amended Texas Education Code §54.208 and authorized the Board to adopt rules to implement the section, beginning with exemptions awarded for the 2009 fall semester. The new sections establish definitions, identify eligible firefighters, indicate requirements for receiving continuation awards, note restrictions for students who have accumulated excess credit hours, and direct institutions to the Coordinating Board's web site for a listing of eligible programs of study.

The following comment was received regarding the new sections:

Comment: The Texas Higher Education Coordinating Board's Legal Counsel commented that in §22.521 the term "commission" should be changed to "commissioner," as the term that appears in statute is "fire fighters' pension commissioner."

Response: The Board agreed with and adopted the amendment.

The new sections are adopted under the Texas Education Code, §54.208, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.208.

§22.521. Eligible Firefighters.

(a) To receive an initial exemption under this program:

(1) A paid firefighter must be employed by a political subdivision of the State of Texas.

(2) A volunteer firefighter must:

(A) currently, and for at least the past year, be an active member of an organized volunteer fire department in this state, as defined by the fire fighters' pension commissioner; and

(B) hold one of the following credentials:

(i) an Accredited Advanced level of certification, or an equivalent successor certification, under the State Firemen's and Fire Marshals' Association of Texas volunteer certification program; or

(ii) Phase V (Firefighter II) certification, or an equivalent successor certification, under the Texas Commission on

Fire Protection's voluntary certification program under Texas Government Code, §419.071.

(b) To receive an exemption in a subsequent semester the student must be in compliance with the institution's financial aid satisfactory academic progress requirements. This provision does not apply to a student who received an exemption under Texas Education Code, §54.208 before the 2009 fall semester as long as the student remains enrolled in the same degree or certificate program and is otherwise eligible to continue to receive the exemption under the statutory provisions that existed at that time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2009.

TRD-200903403
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 26, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 427-6114

♦ ♦ ♦

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4076) and will not be republished.

The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The amendment adopts applicable excerpts of the Performance-Based Monitoring Analysis System 2009 Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. Given the statewide application of the PBMAS and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual PBMAS Manual have been adopted since the first PBMAS Manual was developed in 2004-2005. The PBMAS evolves from year to year, and the intent is to annually update 19 TAC §97.1005 to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the current rule by adopting excerpted sections of the PBMAS 2009 Manual. These excerpted sections describe the specific criteria and calculations that will be used to assign 2009 PBMAS performance levels.

The 2009 PBMAS includes several key changes from the 2008 system. New standards and cut points will be implemented for several PBMAS indicators, including the Limited English Proficient (LEP) Participation Rate, Career and Technical Education (CTE) Nontraditional Course Completion Rate, the Texas Assessment of Knowledge and Skills (TAKS)/TAKS (Accommodated) Participation Rate, the 3-5 Year Olds Less Restrictive Environment (LRE) Placement Rate, the 6-11 Year Olds LRE Placement Rate, the 12-21 Year Olds LRE Placement Rate, and the Special Education Discretionary Placements to In-School Suspension. The Texas English Language Proficiency Assessment System (TELPAS) Reading Multi-Year Beginning Proficiency Level Rate indicator, which was suspended for the 2008 PBMAS, has been reinstated.

A new indicator to measure the performance of LEP students not served in a Bilingual Education (BE) or English as a Second Language (ESL) program has been added to the BE/ESL program area along with a Grades 9-12 LEP Annual Dropout Rate indicator and an indicator entitled TELPAS Composite Rating Levels for Students in U.S. Schools Multiple Years. The hold harmless provision which was added to the 2008 PBMAS to address the impact of the phase-in of TAKS (Accommodated) and Grade 8 Science results has been removed. Changes to the PBMAS indicators for 2009 are marked in the manual as *"New!"* for easy reference.

The adopted amendment also modifies subsection (d) to specify that the PBMAS Manual adopted for the school years prior to 2009-2010 will remain in effect with respect to those school years.

The adopted amendment establishes in rule the PBMAS procedures for 2009. Applicable procedures will be adopted each year as annual versions of the PBMAS Manual are published. The adopted amendment has no locally maintained paperwork requirements.

The TEA determined that the amendment will have no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began June 19, 2009, and ended July 20, 2009. No public comments were received.

The amendment is adopted under the TEC, §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The amendment implements the TEC, §7.028.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2009.

TRD-200903363
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: August 25, 2009
Proposal publication date: June 19, 2009
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) adopts amendments to §§741.41, 741.64, 741.81, 741.103, 741.112, 741.161, and 741.162, and new §741.122, concerning the regulation and licensure of speech-language pathologists and audiologists. The amendment to §741.81 is adopted with changes to the proposed text as published in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2360). The amendments to §§741.41, 741.64, 741.103, 741.112, 741.161, 741.162, and new §741.122 are adopted without changes, and the sections will not be republished. New §741.163 and §§741.211 - 741.215 and the repeal of §741.163 were published in the same issue of the *Texas Register*, but are being withdrawn and will not be adopted.

BACKGROUND AND PURPOSE

The adopted amendments update the rules so that they reflect the board's current operational procedures in processing and approving licensure applications and provide clarification of the rules, so that the intent is not ambiguous for license holders and the public. The adopted amendments are necessary to update and clarify existing licensure requirements for doctor of audiology students by reflecting current national standards.

SECTION-BY-SECTION SUMMARY

The amendments to §741.41(a) are adopted to clarify the professional responsibilities of the license holder to inform the board office with updated personal data.

The amendments to §741.64(g) are adopted to clarify when and who should complete the initial contact with the client.

The amendments to §741.81 are adopted to clarify the educational documentation required for an audiology license.

The amendments to §741.103 are adopted to remove an outdated chart containing maximum permissible ambient noise levels as previously established by the American National Standards Institute (ANSI).

The amendments to §741.112 are adopted to define when the effective date of the jurisprudence examination will begin.

New §741.122 is adopted to add the requirements to administer a jurisprudence examination.

The amendments to §741.161 are adopted to add the requirements to administer a jurisprudence examination at the time of renewal.

The amendments to §741.162 are adopted to clarify that the jurisprudence examination can count as one hour of continuing education requirements (CEU) for professional ethics.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were individuals and one representative from one national association, the American Speech-Language-Hearing Association (ASHA). The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

Comment: Concerning §741.122, the implementation of the jurisprudence examination, many commenters expressed their concern regarding the board's implementation of a jurisprudence examination and argued that such an examination is unnecessary.

Response: The board disagrees with the commenters. By proposing a jurisprudence examination, the board as per Occupations Code, §401.30, is adhering to the Texas Sunset Advisory Commission's Professional Licensing Model which contemplates a jurisprudence examination for professional licensees. The majority of professional licensing boards located within the Department of State Health Services, Professional Licensing and Certification Unit, have either implemented a jurisprudence examination or are in the process of doing so. The board proposes to administer this examination, covering Texas law/rules only once, and only for one renewal period. The examination is not a "pass/fail" examination, but an educational tool. All examinees will be able to pass the examination. If an examinee records an incorrect answer to a given question, the program will return the examinee to the relevant statutory provision or board rule, which contains the correct answer. The examinee will then go back to the missed question and answer it correctly. The cost associated with the administration of the examination is paid solely to the private entity providing the examination. Contrary to several comments, the board will not receive any part of the examination fee. The board views the jurisprudence examination in positive terms, and does not agree that its requirement will lessen the numbers of practitioners practicing in this field. No change was made to the rule due to comments.

Comment: Concerning §741.162(c), the CEU ethics requirements, several commenters seemed to confuse the CEU ethics requirements with the implementation of the jurisprudence examination.

Response: Every two years, each licensee is required to fulfill the CEU requirements by securing 20 clock hours of CEU. The board promulgated rules to require that two of those clock hours focus on ethics. This requirement was prompted in part by the increasing number of complaints filed against licensees, which involved ethical violations of board rules. The two-clock

hour requirement for ethics training is separate and apart from the jurisprudence examination. The board is not requiring that licensees take a test after their two-clock hour Ethics Course. The jurisprudence examination, covering Texas law, will only be administered once to each licensee, and only at the time of that licensee's renewal. No change was made to the rule due to comments.

Comment: Concerning §741.64(g), one of the commenters indicated that they agreed with the clarification of when and who should complete the initial contact with the client.

Response: The board agrees with the commenter. No change was made to the rule as a result of this comment.

Comment: Concerning §741.81(b), one commenter indicated that the wording of the rule was not clearly written and thinks that some words may have been omitted.

Response: The board agrees with the commenter. The board changed the rule text for clarification to read "master's degree (awarded prior to 2007) or the doctoral degree" instead of "doctoral or master degree awarded prior to 2007."

Concerning the withdrawal of the repeal of §741.163 and new §741.163, the board has decided that the rules will not be adopted at this time.

Concerning the withdrawal of the telehealth practice rules in §§741.211 - 741.215, the ASHA informed the board that they were reviewing their position statements on telehealth and should be coming out with their updates in the fall. The board will re-propose the rules with updated information at a later date.

SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

22 TAC §741.41

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903409

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §741.64

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903410

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §741.81

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

§741.81. Requirements for an Audiology License.

(a) An applicant for the audiology license shall meet the requirements set out in the Act and this section.

(b) The master's degree (awarded prior to 2007) or the doctoral degree shall be completed at a college or university that has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

(c) An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

(d) An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within the past 10 years from the date of the application.

(e) In the event the applicant passed the examination referenced in subsection (d) of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title (relating to Requirements for an Intern in Audiology License) prior to repeating the internship. The applicant may appeal to

the board's designee for waiver of the requirement to repeat the internship.

(f) An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903411

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.103

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903412

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903413

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.122

STATUTORY AUTHORITY

The new rule is adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903414

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §741.161, §741.162

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903415

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: August 27, 2009

Proposal publication date: April 10, 2009

For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.133

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §157.133, concerning the requirements for stroke facility designation. New §157.133 is adopted with changes to the proposed text as published in the April 10, 2009, issue of the *Texas Register* (34 TexReg 2366).

BACKGROUND AND PURPOSE

The new rule is necessary to comply with Senate Bill 330, 79th Legislature, 2005, Regular Session, that amended Health and Safety Code, §773.204 and §773.205, which require the Governor's Emergency Medical Services (EMS) and Trauma Advisory Council (GETAC), with the assistance of its Stroke Committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke (TCCDS), to develop stroke facility criteria and a statewide stroke emergency transport plan; and Acts, 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §2.42, added Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the stroke designation program.

SECTION-BY-SECTION SUMMARY

The rule describes how hospitals will qualify for stroke facility designation after they have been accredited by The Joint Commission and how the 22 regional advisory councils may develop regional stroke system plans to include stroke emergency transport plans that must include: (1) training requirements on stroke recognition and treatment, including emergency screening procedures; (2) a list of appropriate early treatments to stabilize patients; (3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; (4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport; and (5) a $100 nonrefundable application fee for each hospital seeking stroke designation.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The department received comments from two individuals during the comment period. The commenters were not against the rule in its entirety; however, one commenter recommended changes, while the second commenter asked for clarification of the rule.

Comment: Concerning the Support (Level III) Stroke Facility Designation Criteria table in Figure 25 TAC, §157.133(a)(3), (Part A.2.e.iii.- iv.), one commenter recommended that the Stroke Nurse Coordinator continuing education and the National Institutes of Health Stroke Scale (NHISS) certification requirements be incorporated into Figure 25 TAC, §157.133(a)(3) (Part 2.c.).

Response: The commission agrees and language has been revised to reflect the changes.

Comment: Concerning the Support (Level III) Stroke Facility Designation Criteria table in Figure 25 TAC, §157.133(a)(3), (Part A.1.), one commenter suggested a change to include the following language, "All Stroke Medical Director responsibilities and qualifications shall be incorporated in the Stroke Medical Director's job description."

Response: The commission disagrees with the suggested revision to the rule language. It is the responsibility of the facility's governing body to determine the content of the job description. No change was made as a result of the comment.

Comment: Concerning the Support (Level III) Stroke Facility Designation Criteria in Figure 25 TAC, §157.133(a)(3), (Part D.5.), one commenter suggested a change to include language that assigns a timeline from 6 to 12 months for nursing staff to achieve credentials and/or competencies in Advanced Cardiac Life Support (ACLS), NIHSS, dysphagia screening and thrombolytic therapy administration.

Response: The commission disagrees with the suggested revision to the rule language, as the current language is not time sensitive. No change was made as a result of the comment.

Comment: Concerning the Support (Level III) Stroke Facility Designation Criteria in Figure 25 TAC, §157.133(a)(3), (Part G.1.), one commenter suggested that to achieve consistency with other documents/rules on a three-year rolling period for re-designating hospitals, and on-site re-certification visits should occur every four years.

Response: The commission disagrees with the suggested change, as submitted. However, the comment did point out confusion concerning facilities seeking initial versus designated facilities; therefore, changes were made to clarify the criteria in §157.133(a)(3) as follows: (Part G.1.), the phrase "seeking initial designation" was added to clarify performance improvement (PI) limited to facilities seeking initial designation; (Part G.2.), the statement "A designated stroke facility must have an ongoing PI program that includes at a minimum" was added to clarify the minimums for designated facilities; and in (Part G.3.), a paragraph was added to clarify the parameters for performance improvement for both initial and designated facilities.

Comment: Concerning the two-year designation of a healthcare facility as a stroke facility in §157.133(d), one commenter suggested that the rule designate stroke facilities for a period of three or four years. Further, the commenter suggested that at the mid-point of the designation cycle, the hospital should provide an attestation from the Chief Executive Officer that the program remains functional, meets essential criterion, and that there have

been no significant changes in the program and/or leadership. The commenter asserted that a two-year certification requirement would place the hospital in a near perpetual state of survey preparation and readiness, and the expense would be demanding for many small-town low-volume hospitals.

Response: The commission disagrees with the suggested revision to the rule language. Language in §157.33(k) requires a facility seeking designation to be surveyed by The Joint Commission (TJC) stroke certification program or other organization approved by the department. TJC certification is currently issued for a two-year period, resulting in a two-year resurvey schedule for the facility to maintain certification. The department's designation program will remain consistent with TJC schedule. By becoming designated, the facility agrees to maintain compliance with the requirements for designation at all times, not just at the time of survey. No changes were made as a result of the comments.

Comment: One commenter suggested the inclusion of a definition of "stroke patient" based on specific International Classification of Disease (ICD) -9 codes.

Response: The commission disagrees with the suggested change because of the potential for these codes to change. Including a definition based on other parameters and taking into account the current controversy related to the inclusion/exclusion of transient ischemic attack (TIA) as stroke, the department feels this would be a substantive change. No change was made as a result of the comment.

Comment: Concerning §157.133(f)(4) and (5), one commenter asked for clarification concerning what is in the "survey" ("stroke designation survey" and "complete survey report") that the hospitals need to submit for designation or re-designation.

Response: The survey is conducted by an external organization identified in §157.133(k) as, "The Joint Commission or other organization approved by the department." The completed survey report is the survey organization's report and includes the facility's responses to any identified deficiencies or recommendations.

Comment: Concerning §157.133(r), one commenter requested clarification concerning denial, suspension or revocation of designation, and asked, "How will the department know if a stroke facility does or does not 'meet and maintain standards'?"

Response: This is accomplished in two ways. First, the purpose of the survey activity is to verify compliance with the requirements. A survey is required every two years as part of the "re-designation" process. Secondly, §157.133(m) outlines self-reporting requirements for a facility failing to maintain critical essential criteria outlined in subsection (m).

Comment: Concerning §157.133(t)(3)(I)(iv), one commenter requested clarification concerning regional stroke guidelines, and asked, "What is the "individual entity" whose medical director will review the data for appropriateness and quality of care? Who reviews each stroke patient's case?"

Response: The individual entity is the designated stroke facility. The medical director is the physician responsible for the clinical oversight of the stroke program.

Comment: Concerning the table in §157.133(a)(3), Figure 25 TAC §157.133(a)(3), one commenter wrote that no figure appeared in the document, therefore no description of the criteria and no definition for "support stroke facility" could be found.

Response: Graphic images included in the PDF (Adobe) version of the rule are published separately in a tables and graphics section in the *Texas Register*. To access the table with the criteria for §157.133(a)(3), go to http://www.sos.state.tx.us/texreg/index.shtml, then to Previous Issues (right side of page - HTML version), go to the April 10, 2009 issue, then select the "Tables and Graphics" link and the table will appear. The HTML version has a clickable link within the rule language that will take the reader to the table containing the criteria part of this rule.

The following changes have been made to provide consistency of terms to further clarify the intent of the rule.

Concerning §157.133(a)(1) and (2), the phrase "essential criteria for an accredited comprehensive stroke center" was removed and replaced with "recommendations" to reflect that the criteria will be the current Brain Attack Coalition recommendations; the title of the table in Figure 25 TAC, §157.133(a)(3) was amended to clarify the intent of the document; and the rule text in subsection (a)(3) was amended to reflect the title of the table in Figure 25 TAC, §157.133(a)(3).

Concerning §157.133(k), the words "a comparable" were deleted and replaced with the word "other" and the phrase "...to verify that the facility is meeting department...standards" was added to allow the department to review other survey organizations that may not necessarily be comparable to TJC, but yet are capable of verifying the facility's meeting of department standards.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the stroke designation program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§157.133. Requirements for Stroke Facility Designation.

(a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Commissioner of the department (commissioner) the designation of an applicant/healthcare facility (facility) as a stroke facility at the level(s) for each location of a facility the office deems appropriate.

(1) Comprehensive Stroke Facility designation, Level I--The facility, including a free-standing children's facility, meets the current Brain Attack Coalition recommendations; actively participates on the appropriate Regional Advisory Council (RAC); and submits data to the department as requested.

(2) Primary Stroke Facility designation, Level II--The facility, including a free-standing children's facility, meets the current

Brain Attack Coalition recommendations; actively participates on the appropriate RAC; and submits data to the department as requested.

(3) Support Stroke Facility designation, Level III--The facility, including a free-standing children's facility, meets the Support Stroke Facility Designation Criteria (in the following Figure) for an accredited support stroke facility; actively participates on the appropriate RAC; and submits data to the department as requested.
Figure: 25 TAC §157.133(a)(3)

(b) A healthcare facility is defined under these rules as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license. Each location shall be considered separately for designation.

(c) The designation process shall consist of three phases.

(1) First phase. The application phase begins with submitting to the office a timely and sufficient application for designation as a stroke facility and ends when the survey report is received by the office.

(2) Second phase. The review phase begins with the office's review of the survey report and ends with its recommendation to the commissioner whether or not to designate the facility.

(3) Third phase. The final phase begins with the commissioner reviewing the recommendation and ends with his/her final decision.

(d) Designation of a healthcare facility as a stroke facility is valid for two years.

(e) It shall be necessary to repeat the stroke designation process as described in this section prior to expiration of a facility's designation or the designation expires.

(f) A timely and sufficient application for a facility seeking initial designation shall include:

(1) the department's current "Complete Application" for the requested level of stroke facility designation, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office;

(2) full payment of the non-refundable $100 designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office;

(4) a stroke designation survey completed within one year of the date of the receipt of the application by the office; and

(5) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office.

(g) If a healthcare facility seeking initial designation fails to meet the requirements in subsection (f)(1) - (5) of this section, the application shall be denied.

(h) A timely and sufficient application for a stroke facility seeking redesignation shall include:

(1) the department's current "Complete Application" form for the requested level of stroke facility designation, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office one year or greater before the designation expiration date;

(2) full payment of the non-refundable $100 designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office; and

(4) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office no less than 60 days prior to the designation expiration date.

(i) If a healthcare facility seeking redesignation fails to meet the requirements outlined in subsection (h)(1) - (4) of this section, the original designation will expire on its expiration date.

(j) The office's analysis of the submitted "Complete Application" form may result in recommendations for corrective action when deficiencies are noted and shall also include a review of:

(1) evidence of current participation in RAC/regional system planning; and

(2) the completeness and appropriateness of the application materials submitted, including the submission of a non-refundable application fee of $100.

(k) Facilities seeking Comprehensive, Primary or Support stroke facility designation shall be surveyed through The Joint Commission's stroke certification program or other organization approved by the department to verify that the facility is meeting department-approved relevant stroke facility standards.

(l) A designated stroke facility shall:

(1) comply with the provisions within this rule, all current state and regional stroke system standards as described in this chapter, and all policies, protocols, and procedures as set forth in the state stroke system plan; and

(2) continue to provide the resources, personnel, equipment, and response as required by its designation level.

(m) Designated stroke facilities failing to meet and/or maintain critical essential criteria outlined in this subsection, shall provide notification about such failings within five days to the office, its RAC, plus other affected RACs, EMS providers, and the healthcare facilities from which it receives and to which it transfers stroke patients:

(1) neurosurgery capabilities (Level I);

(2) neurointerventional surgery capabilities (Level I);

(3) neurology capabilities (Level I, II);

(4) anesthesiology (Levels I);

(5) emergency physicians (all levels);

(6) stroke medical director (all levels);

(7) stroke nurse coordinator/program manager (all levels); and

(8) stroke registry (all levels).

(n) If the facility chooses to apply for a lower level of stroke designation, it may do so at any time; however, it may be necessary to repeat the designation process. There shall be a paper review by the office to determine if and when a full survey shall be required.

(o) If the facility chooses to relinquish or change its stroke designation, it shall provide at least 30 days notice to the RAC and the office.

(p) A healthcare facility may not use the terms "stroke facility," "stroke hospital," "stroke center," "comprehensive stroke center," "primary stroke center," "support stroke facility" or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the healthcare facility is currently designated as that level of stroke facility according to the process described in this section.

(q) The office may review, inspect, evaluate, and audit all stroke patient records, stroke performance improvement, committee minutes, and other documents relevant to stroke care in any designated stroke facility or applicant/healthcare facility at any time to verify compliance with the statute and this rule, including the designation criteria.

(r) If a designated stroke facility fails to meet and/or maintain standards, outlined herein, or if it violates the department hospital licensing regulations, the department may deny, suspend or revoke the designation.

(s) A RAC should develop a stroke system plan based on standard guidelines for comprehensive system development. The stroke system plan is subject to review and approval by the department.

(t) The department may review the RAC's stroke system plan to assure that:

(1) all counties within the trauma service area (TSA) have been included unless a specific county, or portion thereof, has been aligned within an adjacent system;

(2) all health care entities and interested specialty centers have been given an opportunity to participate in the planning process; and

(3) the following components have been addressed:

(A) stroke prevention;

(B) access to the system;

(C) communications;

(D) medical oversight;

(E) pre-hospital triage criteria;

(F) diversion policies;

(G) bypass protocols--guidelines for the emergency transport of patients, who are eligible within the timeframe for United States Food and Drug Administration (FDA) approved stroke care therapies, to the highest state designated stroke center;

(H) regional medical control;

(I) regional stroke treatment guidelines:

(i) guidelines consistent with current standards shall be developed, implemented, and evaluated;

(ii) individual agencies and medical directors may, and are encouraged, to exceed the minimum standards;

(iii) stroke patients will be cared for by health professionals with documented education and skill in the assessment and care of stroke throughout their pre-hospital and hospital course;

(iv) stroke patients will have their medical care, as documented by pre-hospital run forms and hospital charts, reviewed by the individual entity's medical director for appropriateness and quality of care; and

(v) stroke patients will have deviations from standard of care addressed through a documented stroke performance improvement process.

(J) facility triage criteria;

(K) inter-hospital transfers;

(L) planning for the designation of stroke facilities, including the identification of the comprehensive, primary, and support stroke facilities; and

(M) a performance improvement program that evaluates processes and outcomes from a system perspective.

(u) Department approval of the completed stroke system plan may qualify health care entities participating in the system to receive state funding for stroke care if funding is available.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 10, 2009.

TRD-200903469
Lisa Hernandez
General Counsel
Texas Department of Health Services
Effective date: August 30, 2009
Proposal publication date: April 10, 2009
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

The Texas Parks and Wildlife Department (the department) adopts amendments to §§57.111, 57.112, 57.156, 57.157, 57.252, 57.258, 57.377, 57.378, and 57.397, concerning Fisheries. Section 57.111 is adopted with changes to the proposed text published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1183). Sections 57.112, 57.156, 57.157, 57.252, 57.258, 57.377, 57.378, and 57.397 are adopted without changes and will not be republished.

The change to §57.111, concerning Definitions, alters paragraphs (16) - (18) to update taxonomy and correct misspellings.

The change to §57.111 corrects misspellings of "Arapaimidae" in subparagraph (C) and "Acestrorhynchus" in subparagraph (D); removes an inaccurate reference to "Serrasalmideae" in subparagraph (F); corrects an incomplete reference to Incertae in subparagraph (H); eliminates an obsolete taxonomic term ("Ichthyoboridae") in subparagraph (K); replaces "Hypophthalmichthys" with the correct genus "Gibelion" and removes a repetitive reference to giant barbs in subparagraph (M); replaces an inaccurate reference to "Luciocephalidae" in subparagraph (T) with a reference to "Osphronemidae" and "Luciocephalus," which are the correct family and genus names; corrects a misspelling of "vitreus" in subparagraph (V); and eliminates obsolete family and species names in subparagraph (W).

The change to §57.111(17) corrects a misspelling of "Varunidae" in subparagraph (B) and makes the abbreviation for genus names consistent in subparagraph (D).

The change to §57.111(18) removes an inaccurate reference to the Duckweed Family subparagraph (A) and replaces it with the correct name, and corrects a misspelling of "Arrowleaf" in subparagraph (M).

The amendments are necessary as a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The amendment to §57.111, concerning Definitions, updates the scientific names of various families, genera, and species listed in the section. Scientific names are frequently changed as new knowledge about organisms is developed. Each change to a name in the section reflects the official name recognized by the American Fisheries Society, which is the acknowledged arbiter of taxonomic nomenclature with respect to aquatic organisms. The amendment is nonsubstantive and neither removes organisms from nor adds organisms to the list of organisms regulated by the department.

The amendment to §57.112, concerning General Rules, alters subsection (b) to replace the term "public waters" with the term "water of this state." The amendment is necessary to be consistent with Parks and Wildlife Code, §66.007, which states that "No person may import, possess, sell, or place into water of this state exotic harmful or potentially harmful fish, shellfish, or aquatic plants except as authorized by rule or permit issued by the department."

The amendment to §57.156, concerning Definitions, corrects an inaccurate reference in paragraph (2) to the title of a publication concerning bivalve mollusks. The change is necessary for accuracy and is nonsubstantive.

The amendment to §57.157, concerning Mussels and Clams, corrects a misspelling of a species name in subsection (b). The change is necessary for accuracy and is nonsubstantive.

The amendments to §57.252 and §57.258, concerning Introduction of Fish, Shellfish, and Aquatic Plants, alter §57.252(f)(5) and §57.258(5) to correct an inaccurate reference to the time period in which a permittee must remove enclosures and associated infrastructure from public waters as a result of permit expiration or revocation. In a previous rulemaking, the department lengthened the time period for removal from 10 days to 60 days and inadvertently failed to indicate that change in the notice of adoption when the rules were adopted. The changes are necessary to maintain consistent rules that reflect the decisions of the commission and are nonsubstantive.

The amendment to §57.377, concerning Definitions, removes the list of game fish and replaces it with a reference to the definition of game fish contained in §65.3 of this title (relating to Definitions). The change is nonsubstantive and is necessary to eliminate the need to make changes in several rules each time a species is designated as a game fish.

The amendment to §57.378, concerning Nongame Fishes Covered by These Rules, renames the section, corrects misspellings of species names, and updates taxonomic references. The change is necessary to maintain accurate rules and is nonsubstantive.

The amendment to §57.397, concerning Broodfish Permit; Revocation, alters the section to indicate that revocation of a permit is done by the department rather than by the executive director. The change is necessary to maintain accuracy and is nonsubstantive.

The department received no comments concerning adoption of the proposed rules.

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.111, §57.112

The amendments are adopted under Parks and Wildlife Code, §66.007, which requires the department to make rules governing the importation, possession, and sale of exotic harmful or potentially harmful fish, shellfish, or aquatic plants and their placement into water of this state; §67.004, which requires the commission to establish by rule any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish; and §78.006, which authorizes the commission to regulate the taking, possession, purchase, and sale of mussels and clams.

§57.111. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aquaculture or fish farming--The business of producing and selling cultured species raised in private facilities.

(2) Aquaculturist or fish farmer--Any person engaged in aquaculture.

(3) Aquaculture facility--The property, including all drainage ditches and private facilities where cultured species are produced, held, propagated, transported or sold.

(4) Aquaculture complex--A group of two or more separately owned aquaculture facilities located at a common site and sharing privately owned water diversion or drainage structures.

(5) Beheaded--The complete detachment of the head (that portion of the fish from the gills to the nose) from the body.

(6) Certified Inspector--An employee of the Texas Parks and Wildlife Department who has satisfactorily completed a department approved course in clinical analysis of shellfish.

(7) Cultured species--Aquatic plants or wildlife resources raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(8) Clinical Analysis Checklist--A TPWD form specifying sampling protocols and listing certain characteristics which may constitute manifestations of disease.

(9) Department--The Texas Parks and Wildlife Department or a designated employee of the department.

(10) Director--The executive director of the Texas Parks and Wildlife Department.

(11) Disease--Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

(12) Disease-Free--A status, based on the results of an examination conducted by a department approved shellfish disease spe-

cialist that certifies a group of aquatic organisms as being free of disease.

(13) Exotic species--A nonindigenous plant or wildlife resource not normally found in public water of this state.

(14) Grass carp--The species Ctenopharyngodon idella.

(15) Gutted--The complete removal of all internal organs and entrails.

(16) Harmful or potentially harmful exotic fish--

(A) Lampreys Family: Petromyzontidae--all species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays Family: Potamotrygonidae--all species;

(C) Arapaima Family: Arapaimidae--Arapaima gigas;

(D) South American Pike Characoids Family: Acestrorhynchidae--all species of genus Acestrorhynchus;

(E) African Tiger Fishes Family, Family Alestidae--all species of genus Hydrocynus;

(F) Piranhas and Pirambebas: Family Characidae--all species of the genus Piaractus;

(G) Payara and other wolf or vampire tetras: Dogtooth characins, Family Cynodontidae--all species of genera Hydrolycus, Rhaphiodon, and Cynodon;

(H) Dourados: Family Characidae, Subfamily: Incertae sedis--all species of genus Salminus;

(I) South American Tiger Fishes Family: Erythrinidae--all species;

(J) South American Pike Characoids Family: Ctenoluciidae--all species of genera Ctenolucius and Boulengerella;

(K) African Pike Characoids Families: Hepsetidae, and Citharinidae--all species;

(L) Electric Eels Family: Gymnotidae--Electrophorus electricus;

(M) Carps and Minnows Family: Cyprinidae--all species and hybrids of species of genera: Aspius, Pseudaspius, Aspiolucius (Asps); Abramis, Blicca, Megalobrama, Parabramis (Old World Breams); Hypophthalmichthys or Aristichthys (Bighead and Silver Carp); Mylopharyngodon (Black Carp); Ctenopharyngodon (Grass Carp); Cirrhinus (Mud Carp); Thynnichthys (Sandkhol Carp); Gibelion (Catla); Leuciscus (Old World Chubs, Ide, Orfe, Daces); Tor, and Neolissochilus hexagonolepsis (and Mahseers); Rutilus (Roaches); Scardinius (Rudds); Elopichthys (Yellowcheek); Catlocarpio (Giant Siamese Carp); all species of the genus Labeo (Labeos) except Labeo chrysophekadion (Black SharkMinnow);

(N) Walking Catfishes Family: Clariidae--all species;

(O) Electric Catfishes Family: Malapteruridae--all species;

(P) South American Parasitic Candiru Catfishes Family: Trichomycteridae;

(Q) Pike Killifish Family: Poeciliidae--Belonesox belizanus;

(R) Marine Stonefishes Family: Synanceiidae--all species;

(S) Tilapia Family: Cichlidae--all species of genera Tilapia, Oreochromis and Sarotherodon;

(T) Asian Pikeheads Family: Osphronemidae- Luciocephalus;

(U) Snakeheads Family: Channidae--all species;

(V) Old World Pike-Perches Family: Percidae--all species of the genus Sander except Sander vitreus;

(W) Nile Perch Family: Family Latidae--all species of genus Lates;

(X) Seatrouts and Corvinas Family: Sciaenidae--all species of genus Cynoscion except Cynoscion nebulosus, C. nothus, and C. arenarius;

(Y) Whale Catfishes Family: Cetopsidae--all species;

(Z) Ruffe Family: Percidae--all species of genus Gymnocephalus;

(AA) Air sac Catfishes Family: Heteropneustidae--all species;

(BB) Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae--all species;

(CC) Freshwater Eels Family Anguillidae--all species except Anguilla rostrata;

(DD) Round Gobies Family: Gobiidae--all species of genus Neogobius;

(EE) Temperate Basses Family: Moronidae--all species except for Morone saxatilis, M. chrysops and M. mississippiensis and hybrids between these three species;

(FF) Temperate Perches Family: Percichthyidae--all species.

(17) Harmful or potentially harmful exotic shellfish--

(A) Crayfishes Family: Parastacidae--all species;

(B) Mitten crabs Family: Varunidae--all species of genus Eriocheir;

(C) Zebra Mussels Family: Dreissenidae--all species of genus Dreissena;

(D) Penaeid Shrimp Family: Penaeidae--all species of genera Penaeus, Litopenaeus, Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus (all previously considered Penaeus) except L. setiferus, F. aztecus and F. duorarum.

(E) Oyster Family: Ostreidae--all species except Crassostrea virginica and Ostrea equestris.

(F) Applesnails and Giant Rams-Horn Snail Family Ampullariidae and Marisa, except spiketop applesnail (Pomacea bridgesi).

(18) Harmful or potentially harmful exotic plants--

(A) Giant or Dotted Duckweed Family: Araceae (previously Lemnaceae)--Landoltia punctata;

(B) Salvinia Family: Salviniaceae--all species of genus Salvinia;

(C) Water hyacinth Family: Pontederiaceae--Eichhornia crassipes (floating water hyacinth) and E. azurea (rooted water hyacinth);

(D) Waterlettuce Family: Araceae--Pistia stratiotes;

(E) Hydrilla Family: Hydrocharitaceae--Hydrilla verticillata;

(F) Lagarosiphon Family: Hydrocharitaceae--Lagarosiphon major;

(G) Eurasian Watermilfoil Family: Haloragaceae--Myriophyllum spicatum;

(H) Alligatorweed Family: Amaranthaceae--Alternanthera philoxeroides;

(I) Paperbark Family: Myrtaceae--Melaleuca quinquenervia;

(J) Torpedograss Family: Poaceae--Panicum repens;

(K) Water spinach (also called ong choy, rau mong and kangkong) Family: Convolvulaceae--Ipomoea aquatica.

(L) Ambulia (Asian marshweed) Family: Scrophulariaceae--Limnophila sessiliflora;

(M) Arrowleaf False Pickerelweed Family: Pontederiaceae--Monochoria hastate;

(N) Heartshaped False Pickerelweed Family: Pontederiaceae--Monochoria vaginalis;

(O) Duck-lettuce Family: Hydrocharitaceae--Ottelia alismoides;

(P) Wetland Nightshade Family: Solanaceae--Solanum tampicense;

(Q) Exotic Bur-reed Family: Sparganiaceae--Sparganium erectum;

(R) Brazilian Peppertree Family: Anacardiaceae--Schinus terebinthifolius;

(S) Purple Loosestrife Family: Lythraceae--Lythrum salicaria.

(19) Harmful or potentially harmful exotic species exclusion zone--That part of the state that is both south of SH 21 and east of I-35, but not including Brazos County.

(20) Immediately--Without delay; with no intervening span of time.

(21) Manifestations of disease--Manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(22) Nauplius or nauplii--A larval crustacean having no trunk segmentation and only three pairs of appendages.

(23) Operator--The person responsible for the overall operation of a wastewater treatment facility.

(24) Place of business--A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.

(25) Post-larvae--A juvenile crustacean having acquired a full complement of functional appendages.

(26) Private facility--A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

(27) Private facility effluent--Any and all water which has been used in aquaculture activities.

(28) Private pond--A pond, tank, lake, or other structure capable of holding cultured species in confinement wholly within or on private land.

(29) Public aquarium--An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.

(30) Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(31) Quarantine condition--Confinement of exotic shellfish such that neither the shellfish nor the water in which they are or were maintained comes into contact with water in the state and with other fish and/or shellfish.

(32) Shellfish disease specialist--A person with a degree in veterinary medicine or a Ph.D. who specializes in disease of shellfish.

(33) Triploid grass or black carp--A grass carp (Ctenopharyngodon idella) or black carp (Mylophryngodon piceus) that has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(34) Waste--Waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(35) Water in the state--Water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

(36) Wastewater treatment facility--All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Commission on Environmental Quality.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903317
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

SUBCHAPTER B. MUSSELS AND CLAMS

31 TAC §57.156, §57.157

The amendments are adopted under Parks and Wildlife Code, §78.006, which authorizes the commission to regulate the taking, possession, purchase, and sale of mussels and clams.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903318

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4814

♦ ♦ ♦

SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.252, §57.258

The amendments are adopted under Parks and Wildlife Code, §66.015, which requires the commission to establish rules and regulations governing permits to introduce fish, shellfish, or aquatic plants into the public water of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903319
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

SUBCHAPTER E. PERMITS TO SELL NONGAME FISH TAKEN FROM PUBLIC FRESH WATER

31 TAC §57.377, §57.378

The amendments are adopted under Parks and Wildlife Code, §67.004, which requires the commission to establish by rule any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903320
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

SUBCHAPTER F. COLLECTION OF BROODFISH FROM TEXAS WATERS

31 TAC §57.397

The amendment is adopted under Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for issuance of a permit for the take of broodfish from public waters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903321
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §65.42, amendments to §§65.3, 65.56, 65.64, 65.72, and 65.73, and new §65.42, concerning the Statewide Hunting and Fishing Proclamation. New §65.42 and the amendments to §§65.64, 65.72, and 65.73 are adopted with changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1202). The repeal of §65.42, and amendments to §65.3 and §65.56 are adopted without changes and will not be republished.

The change to §65.42 corrects two inaccurate internal references. As proposed, subsection (b)(17)(C)(ii)(II) specifies that permits for the take of antlerless deer by muzzleloader are not required in the counties "listed in paragraph (10) of this section." This is incorrect. The reference should be to paragraph (12). The intent of the provision is to provide an exception in a group of counties where antlerless harvest during the general season is by permit only. Those counties are listed in paragraph (12), not in paragraph (10). The change is nonsubstantive.

As proposed, §65.42(b)(18)(C) specifies that the provisions of that subparagraph apply to all of the counties "listed in paragraphs (1) - (13) of this subsection." This is incorrect. The department's intent is that the provision apply to all counties in which an open season has been established. Those counties are listed in paragraphs (1) - (14), not (1) - (13). The change is nonsubstantive.

The change to §65.64 corrects an inaccurate internal reference. The proposed amendment to §65.64(b)(4)(B) established a youth-only spring turkey season in all counties listed in subsection (b)(3), which is incorrect. The youth-only season has never been open in counties with a one-bird bag limit; thus, the youth-only spring season should apply only in the counties listed in subsection (b)(3)(A) and (B).

The change to §65.72 affects proposed provisions concerning flounder and gray triggerfish.

As proposed, the amendment affecting flounder would have closed the flounder fishery for the entire month of November. The rule as adopted allows a person to take two flounder

per day in November, but the lawful means are restricted to pole-and-line only. The intent of the proposed amendment was to restore spawning biomass in the fishery. The November closure was the fastest way to achieve that goal. Allowing limited take of flounder during the month of November by means other than gigging will achieve the same goal, but will not achieve it as quickly.

As proposed, the amendment affecting gray triggerfish would have established a minimum length limit of 14 inches in order to be consistent with federal guidelines. The federal guidelines recommend a minimum length limit of 16 inches (total length) or 14 inches (fork length), which are roughly equivalent. The department uses the total length calculation to enforce length limits, but inadvertently published the minimum fork length value rather than the minimum total length value. The change establishes a 16-inch minimum length limit (total length) in order to avoid angler confusion. The change is nonsubstantive.

As proposed, the amendment to §65.73, concerning Fishing Guide License-Required Documentation, required a person seeking licensure as a paddle-craft fishing guide to complete the "Three Star Sea Kayak" and "Four Star Leader Sea Kayak" training or the "Level II Essentials of Kayak Touring" and "Coastal Kayak Day Trip Leading" training. The "Three Star Sea Kayak" course is a prerequisite for the "Four Star Leader Sea Kayak" course. Similarly, the "Level II Essentials of Kayak Touring" course is a prerequisite for the "Coastal Kayak Day Trip Leading" course. Thus, it is only necessary to require a person seeking licensure to complete either the "Four Star Leader Sea Kayak" course or the "Coastal Kayak Day Trip Leading" course, since neither of those courses can be taken unless the person has also taken the prerequisite course. The change to §65.73 makes this simplification, which is nonsubstantive.

The repeal of §65.42 is necessary because comprehensive changes have been made to the section as part of a new approach to deer management.

The amendment to §65.3, concerning Definitions, adds definitions for "paddle craft" and "paddle-craft fishing guide" because the amendment to §65.73, concerning Fishing Guide License-Required Documentation, creates a fishing guide license for persons solely using paddle craft.

New §65.42, concerning Deer, establishes the open seasons, bag limits, and special provisions for the take of white-tailed and mule deer in Texas. The new section reflects a new approach to deer management being introduced by the department. Until recently, the department collected biological information regarding white-tailed deer populations and harvest by regulatory compartment, typically a group of counties in geographical proximity to each other. The regulatory compartment concept was used for many years and was adequate to analyze deer population dynamics within the boundaries of counties; however, that approach contributed to highly variable population estimates, which affected the department's ability to detect changes within a given deer population. As a result of the department's comprehensive science review in 2005, Wildlife Division staff developed an entirely new approach to data collection for white-tailed deer, defining specific areas (known as Resource Management Units (RMU)) that share similar soil types, vegetative communities, wildlife ecology, and land-use practices. The intent is to develop deer seasons, bag limits, and special provisions that allow the department to monitor the efficacy of management strategies on deer populations within each RMU. The new rule will still use the familiar system of county boundaries and major highways to delineate various regulatory regimes. The new rule is intended to provide additional hunting opportunity where possible within the tenets of sound biological management, address resource concerns such as increasing deer densities, habitat degradation, and poor age structure among bucks, and simplify regulations.

New section §65.42 retains certain provisions that are identical to those contained in the rule being replaced. With respect to white-tailed deer, those provisions are the existing lengths of the general open season and the archery-only open season, provisions governing the use of Managed Lands Deer Permits and Landowner Assisted Management Permits, provisions stating exceptions to the county and aggregate bag limits when certain tags or permits are used, provisions governing the definition of lawful bucks in counties where the "antler restriction" rule is implemented, and provisions governing the take of deer during Special Late Antlerless and Spike-buck Deer seasons. The counties listed in new subsection (b)(1) retain the same provisions contained in current subsection (b)(1), with the exception of Atascosa County, which is addressed elsewhere in this preamble. The provisions governing the take of mule deer are identical in the new section to those contained in current §65.42(c).

Changes to buck bag limits

Under current regulations there are 85 one-buck counties in Texas. Historically, one-buck counties were areas where hunting pressure had been so intense that bucks could not attain maturity, or where deer densities were so low that buck age structure could be affected by very little hunting pressure. The department has determined that the one-buck bag limit approach did not significantly reduce hunting pressure on bucks in counties where tract sizes are relatively small and hunter density is relatively high, primarily in the eastern half of the state (e.g., Pineywoods, Post Oak Savannah, and Cross Timbers and Prairies ecoregions). Therefore, an alternative buck-harvest strategy was necessary in those areas in order to improve buck age structure. The recent implementation of the "antler-restriction rule" in many of those counties has produced age structures that are desirable.

Based on data obtained from 61 counties where the "antler-restriction rule" has been implemented, the department is satisfied that the "antler-restriction rule" has been quite effective at improving buck age structure while maintaining ample hunting opportunity. Therefore the new rule implements the "antler-restriction rule" in 52 additional counties where yearling and 2.5-year-old bucks comprise from 55 - 68% of the total buck harvest. For the first time, the "antler-restriction rule" will be implemented in counties where, under current rule, more than one buck is allowed to be taken. All counties in which this harvest strategy is implemented will have a two-buck bag limit. The affected counties are Anderson, Angelina, Archer, Atascosa, Brazos, Brown, Chambers, Clay, Cooke, Denton, Ellis, Falls, Freestone, Grayson, Grimes, Hardin, Harris, Henderson, Hill, Hood, Hunt, Jack, Jasper, Jefferson, Johnson, Kaufman, Liberty, Limestone, Madison, McLennan, Milam, Mills, Montague, Montgomery, Navarro, Newton, Orange, Palo Pinto, Parker, Polk, Robertson, San Jacinto, Smith, Stephens, Tarrant, Trinity, Tyler, Van Zandt, Walker, Wichita, Wise, and Young.

In the eastern Rolling Plains, relatively large tract sizes and light hunter density have allowed the deer population to expand as habitat has become more favorable to white-tailed deer. Buck age structure in this area is comparable to that in areas where the antler-restriction rule has been implemented, and staff has determined that buck populations in the eastern Rolling Plains

can withstand an additional buck in the bag with no restrictions. Therefore, the new rule implements a buck bag limit of two bucks in Baylor, Callahan, Haskell, Jones, Knox, Shackelford, Taylor, Throckmorton, and Wilbarger counties.

Changes to antlerless bag limits

There are three different antlerless-deer bag limits in Texas: a two-antlerless bag in all counties north and east of the Edwards Plateau; a five-antlerless bag in south Texas and the majority of the Edwards Plateau; and a four-antlerless bag in the Trans Pecos ecoregion. The current approach contains a mix of harvest strategies in each of several RMUs, making it very difficult for the department to evaluate a deer population's response to any particular harvest strategy. Furthermore, there are RMUs where the two-antlerless bag is insufficient to adequately manage increasing deer populations and deteriorating habitat. Therefore, the new rule implements more liberal antlerless-deer bag limits in the eastern Trans Pecos and Rolling Plains, and in portions of the Cross Timbers and Prairies ecoregion.

White-tailed deer densities throughout the eastern Trans Pecos are very similar to densities in Edwards Plateau RMUs to the east. The new rule increases the bag limit from four antlerless deer to five antlerless deer in Pecos, Terrell, and Upton counties in an effort to increase hunting opportunity and address resource concerns.

White-tailed deer densities have remained relatively stable in much of the Cross Timbers. The department believes that increasing the antlerless-deer bag limit in this region will increase total deer harvest, which is imperative for habitat recovery. Therefore, the new rule increases the antlerless deer bag limit from two antlerless deer to five antlerless deer in Archer, Baylor, Bell (west of IH35), Bosque, Callahan, Clay, Coryell, Hamilton, Haskell, Hill, Jack, Jones, Knox, Lampasas, McLennan, Palo Pinto, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Williamson (west of IH35), and Young counties.

Although white-tailed deer densities in the western Rolling Plains and eastern Panhandle are highly variable, there are areas containing suitable habitat that have become saturated with deer, and whitetails are expanding into marginal to poor habitat. Browsing pressure in these areas is severe, where little woody vegetation exists within five feet of the ground. Therefore, the new rule increases the antlerless bag limit from two antlerless deer to five antlerless deer in Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties.

Antlerless deer harvest in many counties has been controlled by what are popularly known as "doe days," the designation of specific time periods when antlerless deer may be harvested without a permit. The current rules allow for four specific regimes: four "doe days," 16 "doe days," and "doe days" from the beginning of the season until the Sunday following Thanksgiving. Additionally, there are counties where the harvest of antlerless deer is strictly by permit only. As is the case in other parts of the state, the introduction of the RMU concept means that current harvest regimes are not consistent across RMUs. Therefore, the new rule eliminates "doe days" (i.e., allow antlerless harvest without permits for the entirety of the general season) in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties (which currently allow antlerless harvest by permit only), Denton and Tarrant counties (which currently have 16 "doe days") and in Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties (which currently have 23-plus "doe days"). Staff believes that the new rule will create additional hunting opportunity in areas where increased antlerless harvest is desirable, as well as provide a consistent time period during which antlerless deer may be harvested. Similarly, the new rule increases the number of "doe days" in Bowie and Rusk counties (from 4 to 16), in Cherokee and Houston counties (from 4 to 23-plus), and in Anderson, Henderson, Hunt, Leon, Rains, Smith, and Van Zandt counties (from no "doe days" to four).

The new rule allows antlerless harvest only by permit in Grayson County. Grayson County currently has a three-deer bag limit, not more than one of which may be a buck, not more than two of which may be antlerless, and four "doe days". As previously mentioned, the new rule implements the antler-restriction rule in Grayson County, which increases the buck bag limit to two.

The new rule also implements an open season in Dawson, Deaf Smith, and Martin counties, which currently have a closed season. The white-tailed deer population and distribution has increased in portions of these counties to the extent that a season is justifiable. The new rule creates a season opening the first Saturday in November and running through the first Saturday in January, full-season either-sex, with a three-deer bag limit (no more than one buck and no more than two antlerless). Opening the season and allowing full season either-sex harvest will increase hunting opportunity, allow landowners and managers more flexibility in their white-tailed deer management decisions, and will not adversely affect the resource.

Special Late Seasons

In an attempt to meet the general objectives for deer management mentioned earlier, and to standardize the length of all late seasons, the new rule expands the current late antlerless and spike season into 67 additional counties and expands the muzzleloader season into 37 additional counties. In Pecos, Terrell, and Upton counties, the current muzzleloader season is replaced by a general late season for antlerless and spike buck deer.

The new rule creates a 14-day late antlerless and spike deer season in Archer, Armstrong, Baylor, Bell (West of IH35), Borden, Bosque, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crosby, Denton, Dickens, Donley, Eastland, Erath, Fisher, Floyd, Foard, Garza, Gray, Hall, Hamilton, Hardeman, Haskell, Hemphill, Hill, Hood, Hutchinson, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Pecos, Roberts, Scurry, Shackelford, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terrell, Throckmorton, Upton, Wheeler, Wichita, Wilbarger, Williamson (West of IH35), Wise, and Young counties. In Pecos, Terrell, and Upton counties, the current muzzleloader-only open season is replaced by a late antlerless and spike season.

The current muzzleloader-only open season is a nine-day late season during which antlerless and spike deer may be taken only by muzzleloading firearms. The new rule expands the muzzleloader season from nine to 14 days in all counties that currently have a muzzleloader season, makes it run concurrently with all other late seasons, allows for the bag composition to be identical to that of the general season, and expands it to include Austin, Bastrop, Bowie, Brazoria, Caldwell, Camp, Cass, Cherokee, Colorado, De Witt, Fayette, Fort Bend, Goliad, Gon-

zales, Gregg, Guadalupe, Harrison, Houston, Jackson, Karnes, Lavaca, Lee, Marion, Matagorda, Morris, Nacogdoches, Panola, Rusk, Sabine, San Augustine, Shelby, Upshur, Victoria, Waller, Washington, Wharton, and Wilson counties.

The new rule also expands the late youth-only season from two days to 14 days and makes it run concurrently with the special late antlerless and spike deer and special muzzleloader seasons. The expansion is intended to create additional opportunity for parents and children to hunt together during January.

Special Provisions

Under current §65.42, antlerless deer may not be harvested on United States Forest Service (USFS) lands without an antlerless permit, regardless of the season and bag limit established for county. This is also true of U.S. Army Corps of Engineers lands and lands owned by river authorities. USFS personnel have requested that the permit requirement be removed in specific areas, allowing hunters to be governed by the county regulations, including the utilization of "doe days." Therefore, the new rule creates special provisions for USFS properties in Montague and Wise counties, where the deer populations should not be adversely impacted with a regulation allowing an unknown number of hunters the opportunity to harvest antlerless deer without a permit from Thanksgiving Day through the Sunday immediately following Thanksgiving. USFS personnel also have requested that the county regulations for Fannin County apply to USFS lands in Fannin County. Therefore, the new rule also allows for the harvest of antlerless deer without a permit on USFS lands in Fannin County during the four "doe days" established in that county.

New §65.42 also implements a 9-day, buck-only general season for mule deer in Parmer County. Under current rule, there is no open season for mule deer in Parmer County, where population surveys have revealed low numbers of mule deer within pockets of suitable habitat. Wildlife Division staff believes that the implementation of a buck-only season will not have any measurable impact on herd productivity or expansion; however, a measurable change in the age structure of bucks is possible as a result of harvest pressure on a previously unhunted population. Implementation of the proposal is expected to result in increased hunter opportunity with no measurable effect on reproduction or distribution of mule deer populations.

The amendment to §65.56, concerning Lesser Prairie Chicken: Open Season, Bag, and Possession Limits, closes the season for lesser prairie chicken until the population recovers to a more sustainable level. The lesser prairie chicken population is in decline across its historic range due to habitat loss and habitat degradation. According to some estimates the total population declined by over 75% between 1963 and 1980. The amendment is necessary because although lesser prairie chicken hunting mortality in Texas is almost nonexistent, closure of the season is a reasonable component of any long-term recovery strategy.

The amendment to §65.64, concerning Turkey, corrects an inaccurate cross-reference in subsection (b)(4).

The amendment to §65.72, concerning Fish, consists of several components.

Harvest regulations for blue catfish on Lake Lewisville (Denton County), Lake Richland Chambers (Navarro and Freestone Counties), and Lake Waco (McLennan County) currently consist of a 12-inch minimum length limit and 25-fish daily bag limit. The amendment to §65.72 retains the 25-fish daily bag limit but implements a 30- to 45-inch slot length limit and allows the harvest of only one blue catfish over 45 inches. No harvest of blue catfish between 30 and 45 inches is allowed. The amendment is necessary because harvest data indicate that an extremely high harvest of older fish could have negative impacts on population abundance by affecting spawning and reproduction.

Harvest regulations for largemouth bass on Lake Ray Roberts (Cooke, Denton, and Grayson Counties) currently consist of a 14- to 24-inch slot length limit and a five-fish daily bag (only one bass 24 inches or greater may be retained each day). The amendment implements a 14-inch minimum length limit. The five-fish daily bag limit (the standard statewide regulation) remains in effect. The current regulation was implemented in 1998 in an attempt to explore the feasibility of creating a trophy bass population; however; population structure trend data indicate that the population has not responded to the slot limit, so the department has determined that the rules should revert to the statewide standard.

Under current regulations there are no restrictions on the harvest of alligator gar in Texas. Alligator gar populations are believed to be declining throughout much of their historical range in North America, which includes the Mississippi River system as well as the coastal rivers of the Gulf of Mexico from Florida to northern Mexico. Although the specific severity of these declines is unknown, habitat alteration and over-exploitation are thought to be partially responsible. Alligator gar have been extirpated in Illinois, Indiana, and Ohio, and have been designated as a "Species of Concern" in Oklahoma and Kentucky. In addition, the Endangered Fishes Committee of the American Fisheries Society has listed the alligator gar as "Vulnerable." Observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. The amendment imposes a daily bag limit of one alligator gar per person. The change is intended to protect adult fish while allowing limited harvest, which will ensure population stability while allowing utilization of the resource.

The amendment to §65.72 also affects regulations for alligator gar and blue catfish on Lake Texoma. Recent meetings between fisheries and law enforcement staff from TPWD and Oklahoma Department of Wildlife Conservation (ODWC) resulted in two proposed changes to fishing regulations on Lake Texoma. The proposals are part of an ongoing effort to standardize regulations on a reservoir where management is shared by both states. For reasons discussed earlier, the department is concerned about the status of alligator gar. This concern is shared by biologists with the ODWC. There are currently no restrictions on the take of alligator gar on the Texas portion of Lake Texoma. The amendment institutes a daily bag limit of one alligator gar and prohibits the take of alligator gar in a portion of the lake that under certain environmental conditions is believed to function as spawning grounds for large quantities of alligator gar. Under these conditions, alligator gar are extremely vulnerable to harvest, and because the conditions for spawning do not exist on a regular or cyclical basis, alligator gar breed infrequently.

Current regulations for blue catfish allow a daily bag limit of 15 fish. Harvest data indicate an extremely high harvest of older fish, which could have negative impacts on population abundance. Therefore, the amendment retains the 15-fish daily bag limit but prohibits the retention of more than one blue catfish 30

inches or greater per day, which is expected to protect older and larger fish for breeding purposes.

The amendment also eliminates a time-dependent provision in §65.72(c)(5)(F) that is no longer necessary, and comports that subparagraph accordingly. The commission last year prohibited the take of catfish by archery equipment, to be effective September 1, 2008. The amendment eliminates the reference to the date and removes references to the take of catfish by archery equipment.

Flounder

The amendment to §65.72 also affects provisions governing the recreational and commercial take of flounder. On the basis of pronounced downward trends in fishery independent data (bag seines, bay trawls, gill nets) which showed declines in catch-per-unit-effort (abundance), and declining commercial and recreational landings, the department has determined that measures must be implemented to protect and replenish spawning stock biomass in the fishery. Current harvest regulations for flounder consist of a 14-inch minimum size limit and a 10-fish daily bag and possession limit for recreational take and a 60-fish daily bag and possession limit for commercial take. The amendment to §65.72 implements a five-fish daily bag and possession limit for recreational take and a 30-fish commercial daily bag and possession limit for commercial take. Additionally, the amendment establishes a daily bag and possession limit of two flounder during the month of November and restricts lawful means during that time to pole-and-line only.

In developing the proposal to address the downward trends, the department considered several alternatives, in addition to the current proposal. The department considered: (1) a five-fish recreational/30-fish commercial bag limit with no closure; (2) a November closure with no change to current bag limits; (3) a five-fish recreational/45-fish commercial bag limit with a November closure; (4) a five-fish recreational/40-fish commercial bag limit with a November closure; (5) a five-fish recreational/30-fish commercial bag limit with an October to December closure; and (6) an October to December closure with no change to bag limits. The department believes that a 30-fish commercial limit, a five-fish recreational limit and a limited November harvest will best balance competing interests in achieving the objective of the amendment while being less burdensome to anglers.

Federal-State Managed Species

Several fish species are managed jointly by the department, the Gulf of Mexico Fishery Management Council (GMFMC) and the National Marine Fisheries Service (NMFS). As a result of the finalization by NMFS of the Highly Migratory Species Amendment 2, and Reef Fish Amendments 30A and 30B, the department is now seeking to achieve greater consistency with federal rules affecting greater amberjack, gag, gray triggerfish, and sharks. NMFS and GMFMC have determined that greater amberjack, gray triggerfish, gag grouper, and some species of sharks are in an overfished condition or are undergoing overfishing. The amendments to current bag and size limits for those species are intended to provide consistency with federal regulations, which is necessary to facilitate multi-jurisdictional law enforcement, to reduce confusion among anglers, and to achieve the population rebuilding goals set by NMFS and GMFMC.

Greater Amberjack

Current regulations for greater amberjack consist of a 32-inch minimum size limit and a 1-fish daily bag limit. The amendment to §65.72 implements a 34-inch minimum size limit. According to stock assessments, greater amberjack were found to be undergoing overfishing in 2006. Within the context of the amendment, a greater amberjack minimum size limit of 34 inches total length is consistent with federal guidelines and follows a previous rule made by the National Marine Fisheries Service on August 4, 2008. The changes for greater amberjack are in accordance with the suggested changes as published in Amendment 30A to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico as published in the Federal Register on July 3, 2008 (73 Fed. Reg. 38139 - 38143).

Gray Triggerfish

Harvest of gray triggerfish in Texas waters is currently unregulated. The amendment to §65.72 implements a 20-fish daily bag limit, a 40-fish possession limit, and a 16-inch (total length) minimum size limit. According to stock assessments, gray triggerfish were found to be undergoing overfishing in 2006. Within the context of the amendment, a gray triggerfish minimum size limit of 16 inches total length and a daily bag limit of 20 fish are consistent with federal guidelines and follow a previous rule promulgated by the National Marine Fisheries Service, which became effective August 4, 2008.

Gag Grouper

Harvest of gag grouper in Texas waters is currently unregulated. The amendment to §65.72 implements a 22-inch minimum size limit and a two-fish daily bag limit. The changes for gag grouper are in accordance with the suggested changes as published in Amendment 30B to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico as published in the Federal Register on October 28, 2008 (73 Fed. Reg. 63,932) and a similar interim rule as published in the Federal Register on December 2, 2008 (73 Fed. Reg. 73,192 that became effective on January 1, 2009). According to stock assessments, gag grouper were found to be undergoing overfishing in 2004. Within the context of the amendment, a gag grouper bag limit of two fish per person per day within an aggregate grouper quota is consistent with federal guidelines. To establish consistency between federal and state waters, the proposal establishes a two-fish bag limit. The proposal also establishes a 22-inch minimum size limit, which also tracks a previous federal rule change made by National Marine Fisheries Service in 2000.

Sharks

Current regulations for the take of sharks consist of a 24-inch minimum size limit (total length) with a one-fish daily bag limit. The amendment to §65.72 prohibits the catch or possession of the following sharks: Atlantic angel, basking, bigeye sand tiger, bigeye sixgill, bigeye thresher, bignose, Caribbean reef, Caribbean sharpnose, dusky, Galapagos, longfin mako, narrowtooth, night, sandbar, sand tiger, sevengill, silky, sixgill, smalltail, whale, and white. These sharks have been determined to be in an overfished condition or are undergoing overfishing. The amendment retains the 24-inch minimum size limit for Atlantic sharpnose, blacktip and bonnethead sharks while increasing the minimum size limit for all other sharks, except those listed as prohibited. For the other species which are not prohibited the minimum size limit is increased from 24 inches to 64 inches (total length). The length limits as adopted are consistent with the 54-inch fork length established by Highly Migratory Species, Amendment 2, promulgated by NMFS.

Paddle-Craft License

The amendment to §65.73, concerning Fishing Guide License-Required Documentation, establishes a distinction in requirements between fishing guides operating from a motorized vessel and fishing guides operating from a non-motorized boat (i.e., "paddle craft"). It also establishes criteria under which paddle-craft fishing guides must qualify in order to obtain an "all-water paddle-craft fishing guide" license. Under current rule, all-water fishing guide licensing requirements are unsuited for prospective guides who fish exclusively from paddle craft. Currently, anyone wishing to purchase an all-water fishing guide license must provide proof that he or she possess a United States Coast Guard (USCG) Operator of an Uninspected Passenger Vessel license (OUPV), often referred to as a 6-pack license. To obtain an OUPV, the applicant is required to produce proof that he or she has 360 days of "sea time" in a power vessel. For operators of paddle craft, many of whom do not have access to a power boat, this can present a barrier to obtaining a license. In addition, unique safety issues associated with the operation of paddle craft are not currently addressed by USCG training and licensure standards. Paddlers are more susceptible to capsizing, exposure to the elements, and tides and currents than are power boaters. They are also less visible on the water than larger craft and, therefore, more susceptible to collisions. Creating separate licenses with different sets of requirements for operators of power craft and operators of paddle craft creates the opportunity for operators of paddle craft to obtain a guide license and addresses critical safety issues. The new paddle-craft fishing guide license does not allow anyone to operate as a guide on any motorized craft. Additionally, it should be noted that a guide who has the all-water guide license under the current requirements is still allowed to operate as a guide in either a motorized or a non-motorized craft without the necessity of obtaining a paddle-craft license.

The department received 47 comments opposing adoption of the portion of proposed new §65.42 that implements an increase in the buck bag limit in Baylor, Callahan, Haskell, Jones, Knox, Shackelford, Taylor, Throckmorton, and Wilbarger counties. Of those 47 commenters, 16 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the deer population and the buck populations are declining in Haskell County. The department disagrees with the comment and responds that in the counties of the eastern Rolling Plains that make up Resource Management Units (RMU) 27 and 29, deer densities, herd composition, large tract sizes, and relatively low hunting pressure indicate that a two-buck bag limit with no restrictions can be provided in these RMUs without risk of depletion or waste. Buck age structure in this area is already comparable to that in areas where the antler-restriction rule has been in effect for several years, and the department believes the two-buck bag limit will maintain desirable population parameters in these RMUs with relatively light hunting pressure. Data collected from other RMUs with two- or three-buck bag limits support this rationale. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing the bag limit in Throckmorton would force him to high-fence to keep neighboring properties from killing twice as many bucks. The commenter stated that the buck bag limit increase would encourage hunters to kill younger bucks earlier in the season in anticipation of killing a larger buck later. The commenter further stated that the bag limit increase, by allowing landowners to seek larger lease profits, is in effect allowing short-term economics to trump long-term conservation. The commenter also stated that if conservation was the real purpose, then antler restrictions should be placed on the second buck. The department disagrees with the comment and responds that the regulation as adopted establishes a bag limit for buck deer and does not compel the construction of any type of fence, require a hunter to kill any deer on the basis of age or the time of the season, or in any way regulate the prices a landowner may seek in exchange for allowing hunting on a property. The department also responds that the age structure in the buck herd in RMU 27 (which contains Throckmorton County) is already comparable to age structure in the buck herds in RMUs where the antler restriction has been in effect for several years, and the department believes the two-buck bag limit will maintain desirable population parameters in this RMU with relatively light hunting pressure. Data collected from other RMUs with two- or three-buck bag limits support this rationale. No changes were made as a result of the comment.

One commenter opposed adoption and stated the bag limit increase invites trophy hunters who will kill a nice buck early in the season and a larger buck later. The department disagrees with the comment and responds that the department has determined that at current population densities and hunting pressure, a two-buck bag limit is justified. The department also responds that the landowner and/or hunter make the decision about what to harvest and when to harvest it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no need to change limits and that "deer counts are not accurate." The department disagrees with the comment and responds that the department uses scientifically valid methodology to collect the best data available within the constraints of manpower and cost, and believes that the data justify the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that only high-fenced properties should have a two-buck bag limit. The department disagrees with the comment and responds that at current population densities and hunting pressure, a two-buck bag limit is justified. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer populations in Taylor, Jones, and Callahan counties cannot withstand a two-buck bag limit without antler restrictions. The department disagrees with the comment and responds that the age structure in the buck herds in RMUs 27 and 29 (which contain Taylor, Jones, and Callahan counties) is already comparable to age structure in the buck herd in counties where the antler restriction has been in effect for several years, and the department believes the two-buck bag limit will maintain desirable population parameters in these RMUs with relatively light hunting pressure. Data collected from other RMUs with two- or three-buck bag limits support this rationale. No changes were made as a result of the comment.

One commenter opposed adoption and stated the majority of the population is young deer, the population is low, and that a two-buck bag limit will quickly thin the herd because there are few does and hunters will shoot an additional buck to compensate for not being able to shoot a doe. The department disagrees with the comment and responds that biological data do not indicate that populations are at a level that cannot withstand additional harvest at current levels of hunting pressure. The department also responds that since department data indicate that fewer than 5% of Texas hunters use all five deer tags on the license, and hunting pressure is low in the affected RMUs, the likelihood that overhar-

vest will occur is negligible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is too much hunting pressure in Taylor County and that antler restrictions should be imposed if there is to be a two-buck bag limit. The department disagrees with the comment and responds that in the counties of the eastern Rolling Plains within RMUs 27 and 29, deer densities, herd composition, large tract sizes, and relatively low hunting pressure indicate that a two-buck bag limit with no restrictions can be provided in these RMUs without risk of depletion or waste.. The age structure in the buck herds in RMUs 27 and 29 is already comparable to age structure in the buck herd in counties where the antler restriction has been in effect for several years, and the department believes the two-buck bag limit will maintain desirable population parameters in this RMU with relatively light hunting pressure. Data collected from other RMUs with two- or three-buck bag limits support this rationale. No changes were made as a result of the comment.

One commenter opposed adoption and stated the antler restriction regulations should be implemented in the affected counties, since the buck age structure in the counties in question is comparable to other parts of the state where the "antler restriction" regulation has been implemented. The department agrees with the comment stating the age structure in the buck herds in RMUs 27 and 29 is already comparable to age structure in the buck herd in counties where the antler restriction has been in effect for several years, which is why there is no reason to implement the antler-restriction regulation in counties within RMUs 27 and 29. That particular harvest strategy is implemented in RMUs where buck age structure is not desirable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it doesn't make sense to have one ranch on MLD (Managed Lands Deer) or LAMPS (Landowner Assisted Management Plan) permits and surrounding ranches not. The department disagrees with the comment and responds that participation in management programs such as LAMPS and MLDP is completely voluntary. By participating in such programs, landowners are able to more effectively manage wildlife resources and habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in Knox County the deer population is much, much less than that in Callahan County. The department agrees that RMU 29, which includes Knox County, is less densely populated with white-tailed deer than RMU 27, which includes Callahan County; however, data indicate the white-tailed deer population within RMU 29 can withstand the increased bag limit with no adverse effects. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule could "allow for the complete removal of all hunting in a specific area (similar to the bow only areas), with respect to poor RMU selection, and poor population counts. This would specially be the case on the eastern front due to high density of thickets and nearly impassable areas were the animals love to hide." The department disagrees with the comment and responds that the rule as adopted does not eliminate hunting anywhere and will not have the effect of eliminating hunting anywhere. The department also responds that RMU selection is based primarily on vegetation and soil types; therefore, there is no such thing as "poor RMU selection." No changes were made as a result of the comment.

One commenter opposed adoption and stated that the buck bag limit in Throckmorton County should consist of one spike and one fork-antlered buck. The department disagrees with the comment and responds that deer densities, herd composition, large tract sizes, and relatively low hunting pressure indicate that a two-buck bag limit with no restrictions can be provided without risk of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing the buck bag limit in Taylor County would be detrimental to the overall deer population in that county. The department disagrees with the comment and responds that deer densities, herd composition, large tract sizes, and relatively low hunting pressure indicate that a two-buck bag limit with no restrictions can be provided in Taylor County without risk of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if hunters are able to harvest two bucks with nice antlers the buck population will be reduced. The department disagrees with the comment and responds that deer densities, herd composition, large tract sizes, and relatively low hunting pressure indicate that a two-buck bag limit with no restrictions can be provided in these RMUs without risk of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that altering the regulatory compartment concept sounds expensive and will complicate the county bag limit system. The department disagrees with the comment and responds that the current system of monitoring the effects of harvest regulations on deer populations by county boundaries is not as efficacious as doing so by the RMU approach. The department also responds that in terms of cost, there is no difference. The department also responds that it will make every effort to reduce complications at the user level. No changes were made as a result of the comment.

The department received 318 comments supporting adoption of the portion of proposed new §65.42 that implements an increase in the buck bag limit in Baylor, Callahan, Haskell, Jones, Knox, Shackelford, Taylor, Throckmorton, and Wilbarger counties.

The department received 147 comments opposing adoption of the portion of proposed new §65.42 that implements the "antler-restriction" rule in 52 additional counties. Of those commenters, 104 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Three commenters opposed adoption and stated that the antler-restriction rule creates a situation in which undersize bucks are shot and either left in the field or left untagged. The department disagrees with the comment and responds that the "antler-restriction" rule has been in effect in many counties for over five years and that the sort of scenario described in the comment does not seem to be common. No changes were made as a result of the comments.

One commenter opposed adoption and stated that "cull" deer will never be harvested due to the restrictions currently in place. The department disagrees with the comment and responds that department data indicate that the overwhelming majority of buck deer in Texas become legal bucks by the time they are four years of age. Furthermore, the regulation allows for the harvest of many young "cull" bucks that have at least one unbranched antler. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the rule does not account for deer that never reach a 13-inch inside spread. The department agrees that a buck which never has an unbranched antler and never attains an inside spread width of 13 inches or greater will always be protected from harvest under this regulation. However, such a buck is extremely rare. Data indicate that only four to seven percent of all 4.5-year-old bucks have an inside spread less than 13 inches, and many of these bucks will attain an inside spread of 13 inches or greater within another year or two. Data also suggest that many of those bucks that fall in that category had at least one unbranched antler when they were 1.5 years old. This regulation allows for the harvest of those deer. No changes were made as a result of the comments.

One commenter opposed adoption and stated that "cull bucks keep breeding because their horns never get big enough for them to be legal to shoot." The department disagrees with the comment and responds that department data indicate that the overwhelming majority of buck deer in Texas become legal bucks by the time they are four years of age. Furthermore, the regulation allows for the harvest of many young "cull" bucks that have at least 1 unbranched antler. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules do not allow older or smaller bucks to be removed, which reduces the amount of vegetation and increases the breeding of inferior animals. The department disagrees with the comment and responds that department data indicate that the overwhelming majority of buck deer in Texas become legal bucks by the time they are four years of age. Also, since the bag limit is two bucks, the harvest of an additional buck, assuming hunting pressure remains constant, will result in reduced impacts to habitat. There is no data to indicate that the "antler-restriction" rule alters breeding habits, but this rule does allow for the removal of many "inferior" bucks from the breeding population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that buck selection should be the choice of the landowner and lessee and that the department has misinterpreted the wishes of the people. The department disagrees with the comment and responds that the "antler-restriction" rule is designed to protect certain age classes of buck deer in order to improve the age structure of deer herds in RMUs where pressure on the buck segment of the deer herds has resulted in excessive harvest of young bucks. The department notes, however, that landowners make the ultimate decision as to which legal deer, if any, are harvested. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "education skills on aging live deer are needed by hunters, not restrictions on antler size. Antler restrictions puts pressure on bucks with wide antler genes and depletes the gene pool of 18" plus deer and leave narrower deer to breed" and that "in 20 years the gene pool for 18" plus deer will be depleted from the narrower deer's genes and hunting pressure." The department disagrees with the comment and responds that there is no such thing an "18-inch gene pool." Except for herds affected by transplantation, all deer within a given deer herd have almost identical genotypic makeup (i.e., the genetic information carried by all members of the population is highly shared, the only differences typically arising from variations introduced from neighboring or overlapping herds) and that genetic recombination is not a matter of the prevalence of a particular phenotypic expression (the physical appearance of an individual). No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the antler-restriction rule will make outlaws out of people who made an honest mistake. The department disagrees with the comment and responds that it conducts significant outreach and education efforts to acclimate hunters to the "antler-restriction" rule and that these efforts have historically been successful. In the seven years since the "antler-restriction" rule was introduced, there have been a total of 376 citations issued by department game wardens for violation of the rule. Given that there are approximately one million hunters and the "antler-restriction" rule is in effect in more than 60 counties, the citation history indicates that most if not all hunters understand and are able to comply with the rule without difficulty. This rule does not influence the actions of a person who made an "honest mistake." No changes were made as a result of the comments.

One commenter opposed adoption and stated that estimating inside spread is difficult and that if the department seeks to correct an imbalance in the age structure, the department should restrict the harvest of older deer. The department disagrees with the comment and responds that the 13-inch minimum inside spread requirement was chosen primarily because it was a standard that could be used to reliably protect younger bucks and at the same time be used to determine whether a buck is legal or not. The overwhelming majority of deer whose antlers are wider than the distance between their ear tips are older deer and have an inside spread of 13 inches or greater. Other standards that are dependent on more advanced knowledge of deer anatomy and physiology would be more problematic and less effective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not allow the harvest of any two bucks but should require at least one of the bucks to be a spike. The department agrees with the comment and responds that under the "antler-restriction" rule there is a two-buck bag limit and a hunter is restricted to one buck with an inside spread of 13 inches or greater; however, both bucks may be spike bucks if a hunter so desires. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people who care only about antler size should not be hunting. The department disagrees with the comment and responds that the motivations for hunting vary from individual to individual and that it would not be appropriate for the department to dictate aesthetic standards to hunters. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the killing of bucks should be up to the hunter. The department disagrees with the comment and responds that the "antler-restriction" rule is designed to protect certain age classes of buck deer in order to improve the age structure of deer herds in RMUs where pressure on the buck segment of the deer herds has resulted in excessive harvest of young bucks. The department notes, however, that hunters and landowners make the ultimate decision as to which legal deer, if any, are harvested. No changes were made as a result of the comments.

One commenter opposed adoption and stated that people will get discouraged at not seeing good deer and will stop buying licenses. The department disagrees with the comment and responds that in the seven years that the "antler-restriction" rule has been in effect, there is no indication that the rule has re-

sulted in decreased hunting activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule places too great a burden on the hunter to accurately identify lawful bucks. The department disagrees with the comment and responds that the 13-inch minimum inside spread requirement was chosen primarily because it was a standard that could be used to reliably protect younger bucks and at the same time be used to determine whether a buck is legal or not. The overwhelming majority of deer whose antlers are wider than the distance between their ear tips are older deer and have an inside spread of 13 inches or greater. Other standards that are dependent on more advanced knowledge of deer anatomy and physiology would be more problematic and less effective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antler restrictions will only result in less harvest and exponentially higher populations. The department disagrees with the comment and responds that data from counties where the "antler-restriction" rule has been in place for at least three years indicate no significant difference in harvest totals or population density. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer populations are being reduced by fire ants. The department disagrees with the comment and responds that there is no scientific data the department is aware of that indicate a connection between fire ants and population declines in deer anywhere. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule takes food out of people's mouths in troubled times. The department disagrees with the comment and responds that the "antler restriction" rule regulates the harvest of bucks based on age, and that the department does not consider subsistence hunting when determining seasons and bag limits, which are based on biological criteria. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule was originally intended for high fence situations and that kids don't care how big a buck is. The department disagrees with the comment and responds that the "antler-restriction" rule at no point in its development or implementation was intended for high-fence deer management. The department agrees that most children are not interested in the size of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that older deer that cannot be harvested will die of old age and that inferior deer will "spread more bad genes during mating season." The department disagrees with the comment and responds that while it is possible that under the "antler-restriction" rule a buck could live its entire life without becoming a legal buck, this would be extremely rare and there is no evidence that such an occurrence results in any negative genetic impacts to the population. Data indicate 93-96% of 4.5-year-old bucks have an inside spread of at least 13 inches, and the proportion increases with older bucks. Furthermore, data indicate that many of those mature bucks with a narrow antler spread had at least one unbranched antler at 1.5 years of age, and those bucks are available for legal harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will result in declining numbers of hunters and that the deer herd is healthy and seems to be reproducing well with no changes needed. The department disagrees with the comment and responds that in the seven years that the "antler-restriction" rule has been in effect, there is no apparent indication that the rule has resulted in a decline in hunter numbers. The department also responds that the "antler-restriction" rule is not intended to affect reproductive success overall, but could increase fawn recruitment by shortening the breeding and fawning seasons. Research data suggest such a result in populations with more desirable age structure among bucks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are no legal bucks on his lease in Palo Pinto County. The department neither agrees nor disagrees with the comment and responds that population characteristics on any given tract of land are dependent upon a number of factors, including land use practices and hunting pressure. The department further responds that the low observability of legal bucks is evidence of the conditions that the "antler restriction" rule is intended to address. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will discourage young hunters because hunters on properties with department-issued permits are allowed to begin hunting before everyone else and this make the bucks nocturnal, leaving only the small bucks for the children. The department disagrees with the comment and responds that there is no evidence that the use of MLD permits alters the behavior of deer with respect to photoperiod. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rule is not fair to young hunters and leaves too much room for error. The department disagrees with the comments and responds that in the seven years since the "antler-restriction" rule was introduced, there have been a total of 376 citations issued by department game wardens for violation of the rule, none of which were issued to minors. Given that there are approximately one million hunters and the "antler-restriction" rule is in effect in more than 60 counties, the citation history indicates that most if not all hunters understand and are able to comply with the rule without difficulty, including minors. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the state should not manage antler sizes and that people will be afraid to shoot two bucks for fear of getting fined. The department disagrees with the comment and responds that the regulation does not and is not intended to manage antler size; it is intended to address concerns about age structure in herds that have historically sustained excessive harvest of young bucks. Additionally, the department responds that it conducts significant outreach and education efforts to acclimate hunters to the "antler-restriction" rule and that these efforts have historically been successful. In the seven years since the "antler-restriction" rule was introduced, there have been a total of 376 citations issued by department game wardens for violation of the rule. Given that there are approximately one million hunters and the "antler-restriction" rule is in effect in more than 60 counties, the citation history indicates that most if not all hunters understand and are able to comply with the rule without difficulty. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he pays enough for a hunting license and a hunting lease and therefore to be told what size buck he is allowed to shoot is stupid. The department disagrees with the comment and responds that a hunting license is among the most inexpensive items needed to go hunting, that the department does not regulate the price of

hunting leases, and that the rule does not require a hunter to shoot any type of buck. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the foliage in East Texas makes identifying lawful bucks difficult. The department disagrees with the comment and responds that the 13-inch minimum inside spread requirement was chosen primarily because it was a standard that could be used to reliably protect younger bucks and at the same time be used to determine whether a buck is legal or not. In any event, every hunter is expected to identify the target before shooting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would increase the harvest of 1.5-year-old bucks, because 50% of the opportunity would be 1.5-year-old bucks. The department disagrees with the comment and responds that the comment holds true only if 50% of buck population is 1.5 years old and is either spike bucks or have at least one unbranched antler, which is so unlikely as to be impossible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he has only taken one deer in seven years that would have been legal under the new rule. The commenter also stated that people should not have to pay for what God has provided. The department disagrees with the comment and responds that the prevalence of lawful bucks is dependent upon tract size, land use practices, and hunting pressure, and that unregulated harvest of wildlife has historically resulted in serious population declines and in some cases, extirpation. The department further responds that the low observability of legal bucks is evidence of the conditions that the "antler restriction" rule is intended to address. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule does not address nutrition or genetics, does not prevent culling, and is intended to force everyone into LAMPS permits. The commenter also stated that antler restrictions should be implemented statewide so that everyone is on the same playing field. The department disagrees with the comment and responds that the rule is not intended to address nutrition or genetics; it is intended to protect certain age classes of buck deer in order to improve the age structure of deer herds in RMUs where pressure on the buck segment of the deer herds has resulted in excessive harvest of young bucks. The department also responds that hunters and landowners make the ultimate decision as to which legal animals are harvested, not the department. Additionally, the department responds that it is not necessary to implement the "antler-restriction" rule in RMUs where overharvest of young bucks is not a problem. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer numbers are down in Cooke County. The department disagrees with the comment and responds that department data indicate that deer populations in RMUs 22 and 24 (which include Cooke County) are stable or increasing in areas of suitable habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will result in overkill of deer in Limestone County. The department disagrees with the comment and responds that the antler-restriction regulation is not expected to result in increased harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is a poaching problem in Anderson County and that bag limits should not be changed until the poaching problem is addressed. The department disagrees with the comment and responds that poaching is unlikely to affect populations on a landscape scale; thus, there is no reason not to implement the rule in Anderson County, since it meets the department's criteria for implementation of the "antler-restriction" rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would reduce hunting opportunity. The department disagrees with the comment and responds that to the contrary, the rule as adopted increases hunting opportunity by offering a bigger bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that with the economy the way it is, it will be extremely hard for an honest hunter to feed his family. The department disagrees with the comment and responds that the department does not consider subsistence hunting when establishing seasons and bag limits, which are determined by biological criteria. Furthermore, this rule provides hunters an opportunity to harvest an additional deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that out of nine bucks harvested this year in Liberty County only one had an inside spread of greater than 13 inches. The department disagrees that a sample size of nine deer is statistically valid for assessing the suitability of the "antler-restriction" rule in RMU 13 (which contains Liberty County). The department further responds that the low observability of legal bucks is evidence of the conditions that the "antler restriction" rule is intended to address. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be an exception for youth. The department disagrees with the comments and responds that creating differential regulations based on age is problematic for enforcement. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule prevents the taking of some older deer that do not have the best genetics. The department agrees that there may be buck deer that never become legal deer, but disagrees that antler size is an indicator of genetic fitness. In any event, such deer should not be numerous because department data indicate that the overwhelming majority of buck deer in Texas become legal bucks by the time they are four years of age. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he is opposed to restrictions intended to improve trophy hunting. The department disagrees with the comment and responds that the rule is not intended to improve trophy hunting but to restore age structure in the buck segment of the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will "take hunting away" from East Texas and that the way to assure a healthy herd is to control the number of deer harvested not the size of the antlers. The department disagrees with the comment and responds that harvest data from counties where the "antler-restriction" rule has been in place for more than three years indicate that after an initial reduction, harvest numbers return to pre-rule levels. The department agrees that population control is an essential component of efficacious management, but disagrees that age structure problems in the buck segment of the population can be addressed by gross harvest quotas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more regulations are not necessary when hunting numbers are declining and fewer youth are being recruited. The department disagrees with the comment and responds that it does not believe that youth or existing hunters will be frustrated by the rule as adopted. Data indicate that within three years of implantation, the "antler-restriction" rule is regarded favorably by most hunters, so, if anything the rule may actually increase interest and participation in hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should require bucks to be 10 points or more. The department disagrees with the comment and responds that counting antler points accurately is no simpler than attempting to discern if a buck's ear tips are within the inside spread of its antlers. Furthermore, antler-point restrictions have had adverse impacts on buck herds in at least some states where they have been implemented. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antler restrictions are trophy management tools, not wildlife management tools. The commenter stated that the rules will allow young eight-point bucks to be taken rather than mature spikes and six-point bucks s are allowed to walk. The department disagrees with the comment and responds that the rule is not intended to improve trophy hunting but to restore age structure in the buck segment of the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current harvest rules should be retained in Harris County because development is claiming more land and the deer are moving out. The department disagrees with the comment and responds that staff do not expect the antler-restriction regulation to result in increased harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are enough deer in Young County to justify a two-buck bag limit without the antler-restriction rule. The department disagrees with the comment and responds that the harvest of 1.5 and 2.5-year-old bucks in RMU 25 (which contains most of Young County) is too high to justify a two-buck bag limit without antler restrictions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler-restriction rule should not be implemented in Atascosa County because antler restrictions will not improve deer management in the South Texas Zone of large ranches under strict management, but will only reduce opportunity. The department disagrees with the comment and responds that although the buck bag limit in Atascosa County is reduced from three bucks to two bucks, the aggregate bag limit remains at five deer per year; thus the rule as adopted does not reduce overall opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler restriction should not be implemented in Atascosa County because on his ranch only mature deer and spike bucks are harvested and because the rule will not help the deer herd in Atascosa County. The department disagrees with the comment and responds that the rule as adopted allows the harvest of spike bucks and mature deer (provided the inside spread is greater than 13 inches) and will improve deer-population parameters in eastern Atascosa County, which is within RMU 11 and has sustained relatively high harvest rates of young bucks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in Atascosa County a 2.5-year-old buck could very easily exceed the 13-inch minimum inside spread and a yearling buck could be harvested as an antlerless deer. The commenter stated that a two-buck limit with no antler restrictions would be more appropriate. The department agrees that some 2.5-year-old bucks do exceed the 13-inch minimum inside spread and that a yearling buck could be harvested as an antlerless deer, but disagrees that these scenarios are common enough to warrant allowing a two-buck bag limit without antler restrictions, especially considering that the harvest of young bucks in RMU 11, including Atascosa County, has been elevated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the county bag limit should be eliminated and replaced with bag limits designated for each RMU because more deer will be removed under the county bag limits. The department agrees with the comment and responds that in general, the county harvest regulations are consistent with those in other counties within the same RMU. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be separate tags for bucks that have an inside spread of greater than 13 inches and bucks that have an inside spread of less than 13 inches. The department disagrees with the comment and responds that the creation of tags for legal bucks would be expensive and logistically difficult because the current license form has no room for additional tags. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer 2.5 to 4 years old with poor antler development should be considered for cull bucks. The department disagrees with the comment and responds that the overwhelming majority of deer whose antlers are wider than the distance between their ear tips are older deer and have an inside spread of 13 inches or greater, but that ultimately it is a matter of individual preference as to which legal deer are harvested. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed antler restrictions are not needed in Stephens County because they are arbitrary. The department disagrees with the comment and responds that the regulations as adopted for RMU 25 (which includes Stephens County) are not arbitrary, but are intended specifically to restore appropriate age structure to the buck segment of the deer herd. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the populations in Archer, Clay, Jack, and Young counties cannot support a special late-season harvest because of the potential of overharvest. The department disagrees with the comments and responds that the department has determined that at current population densities and hunting pressure, the deer populations in RMUs 25 and 26 (which contains Archer, Clay, Jack, and Young counties) can sustain additional harvest without the danger of depletion or waste. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is no habitat in Angelina County because of the timber companies. The department disagrees with the comment and responds that there is enough suitable habitat in Angelina County to sustain deer populations and that the rule as adopted will not result in additional negative habitat impacts in RMU 14 (which contains

Angelina County). No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too few hunting opportunities in Ellis County to justify a "trophy buck scenario." The department disagrees with the comment and responds that the rule is not intended to improve trophy hunting but to restore age structure in the buck segment of the population. No changes were made as a result of the comments.

One commenter opposed adoption and stated that counties with the antler-restriction rule should have a longer season in order to give hunters more opportunity to use their tags. The department disagrees with the comment and responds that the current season length (from the first Saturday in November through the first Sunday in January) provides sufficient opportunity, especially since most counties also have either a special late antlerless and spike buck season or a special muzzleloader season. The department also notes that management programs such as the MLDP program are available and provide for extended seasons and enhanced bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in Cooke, Montague, and Wise counties there are a lot of mature bucks that need to be removed, not protected, because they are spreading inferior genetics. The department disagrees with the comment and responds that the intent of the "antler-restriction" rule is to restore age structure to the buck segment of the deer herd, not to manipulate genetics. The department also notes that antler characteristics are not indicators of genetic fitness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the counties further west may not need antler restrictions. The department disagrees with the comment and responds that the "antler-restriction" rule is proposed in counties that meet the department's criteria, primarily based on the portion of the harvest composed of 1.5- and 2.5-year-old deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow the take of more than one buck with an inside spread of less than 13 inches if the hunter can prove that the buck is older than 3.5 years. The department disagrees with the comment and responds that because the only way to definitively age deer is posthumously, allowing the harvest of buck deer on the basis of a post-mortem would be problematic and probably injurious to the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that only thing the antler restriction accomplishes is making more money for the state. The department disagrees with the comment and responds that there are no revenue implications to the department or to other units of state government as a result of the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler-restriction rule forces everyone to be a trophy hunter. The department disagrees with the comment and responds that in many counties, the rule increases hunter opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler restriction rule would eliminate the opportunity to remove inferior genetics from the deer herd. The department disagrees with the comment and responds that antler size is not an indicator of genetic fitness. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the antler restriction should not be implemented in Grayson County because the deer population is spotty and fragile and the herd will be harmed by the two-buck bag limit. The department disagrees with the comment and responds that because the lawful means in Grayson County are restricted to archery equipment (low hunter success) and antlerless deer may be taken by permit only (low impact on reproductive rates), the probability of adverse impacts on the deer population are extremely low. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Grayson County should remain a one buck county with antler restrictions. The department disagrees with the comment and responds that because the lawful means in Grayson County are restricted to archery equipment, the two-buck bag limit and the "antler-restriction" rule can be implemented without danger of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the buck bag limit in Cooke County should remain at one and that doe days should be eliminated. The department disagrees with the comment and responds that the increased bag limit is accompanied by antler restrictions, which will achieve desirable harvest numbers for the deer populations within RMUs 22 and 24. The department also notes that the rules as adopted would eliminate "doe days" in Cooke County. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the deer population in Cooke County cannot withstand an increase in the buck bag limit. The department disagrees with the comment and responds that the increased bag limit is accompanied by antler restrictions, which will achieve desirable harvest numbers for the deer populations within RMUs 22 and 24. No changes were made as a result of the comments.

One commenter opposed adoption and stated that implementation of the antler-restriction rule in Navarro County will result in no hunting success. The department disagrees with the comment and responds that data such as population surveys and harvest records indicate that the rule as adopted will not result in the elimination of hunter success in Navarro County. The department further responds that the expectation of low hunter success is evidence of the conditions that the "antler restriction" rule is intended to address. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the doe bag should be increased in Navarro County. The department disagrees with the comment and responds that given the relatively small tract sizes, high hunting pressure, and fragmented habitat in RMUs 19, 20, and 21 (which include Navarro County), a bag limit of two antlerless deer is appropriate to maintain equilibrium between reproduction, harvest, and habitat quality. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the buck bag limit in Hunt County should remain at one, that the season should be 10 days long, and that hunting should be restricted to Hunt County residents. The department disagrees with the comment and responds that the buck segment of the deer herd in RMUs 18 and 21 (which contain Hunt County) is capable of withstanding the proposed buck harvest; that a ten-day season would result in the devastation of existing habitat because of population

increase; and that the Parks and Wildlife Code does not authorize the department to regulate hunting opportunity on the basis of county residency. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a five-day period during which antler restrictions do not apply to small-tract landowners so they can "harvest undesirable genetics from the area." The department disagrees with the comment and responds that there is no such thing as "undesirable genetics." The genetic makeup of an indigenous deer herd is shared by all individuals in the herd, even though not all individuals may not express similar morphological characteristics. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler-restriction rule will increase the age of the deer in his area. The department agrees with the comment and responds that the intent of the "antler-restriction" rule is to allow more buck deer to become older before they are subject to harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that populations in some or all of the counties affected by the antler-restriction rule cannot withstand the increased buck bag limit. The department disagrees with the comment and responds that based on population and harvest data from counties where the "antler-restriction" rule has been in place for three years or more, there is no indication of adverse impacts to populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antler-restriction rule should apply to both bucks in the bag limit. The department disagrees with the comment and responds that the intent of the "antler-restriction" rule is to restore age structure to buck populations by shifting a portion of the harvest from young bucks to older bucks; however, concentrating the harvest solely on older bucks would create a different age structure problem. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the buck bag limit in Parker and Palo Pinto counties should remain at one. The department disagrees with the comment and responds that based on population and harvest data from counties where antler restrictions has been in place for three years or more, there is no indication of adverse impacts to populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for the antler-restriction rule should be one buck for a minimum of five years. The department disagrees with the comment and responds that based on population and harvest data from counties where the "antler-restriction" rule has been in place for three years or more, there is no indication of adverse impacts to populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antler restrictions should not be implemented in Brown County because there are plenty of mature deer there already and deer never look at a hunter directly with their ears in the alert position. The department disagrees with the comment and responds that an analysis of buck harvest and population data in RMUs 23, 24, and 25 indicates that harvest of young bucks merits implementation of the "antler-restriction" rule. The department also responds that the overwhelming majority of deer whose antlers are wider than the distance between their ear tips are older deer and have an inside spread of 13 inches or greater, that other standards that are dependent on more advanced knowledge of deer anatomy and physiology would be more problematic and less effective, and that compliance with the rule has not been a problem elsewhere. No changes were made as a result of the comment.

One commenter opposed adoption and stated that allowing the take of spikes contradicts the "antler-restriction" rule because a spike doesn't always stay a spike. The department disagrees with the comment and responds that liberal harvest of spikes, while protecting all other yearling bucks and many more 2.5- and 3.5-year-old bucks, will recruit far more bucks to older age classes than the current rule allows. No changes were made as a result of the comment.

The department received 391 comments supporting adoption of the portion of proposed new §65.42 that implements the "antler-restriction" rule in 52 additional counties.

The department received 25 comments opposing adoption of the portion of proposed new §65.42 that increases the bag limit from four antlerless deer to five antlerless deer in Pecos, Terrell, and Upton counties. Of those commenters, five elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that there are more mule deer than white-tailed deer. The department disagrees with the comment and responds that the rule as adopted does not affect mule deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department did not "mention if this would only be for one year and then discussed to see if it helped." The department agrees with the comment but responds that the effectiveness of harvest regulations is constantly evaluated. No changes were made as a result of the comment.

Once commenter opposed adoption and stated that "[i]n some areas the population counts have blank regions with limited field data and would be hard to enforce. Doe days would then become a "free for all" for out of town non-landowners." The department disagrees with the comment and responds that the rules as adopted do not implement "doe days" in Pecos, Terrell, or Upton counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that yearling bucks will be mistaken as does leading to a decrease in the buck population. The department disagrees with the comment and responds that mortalities due to mistaken identification are not believed to be a significant issue in any part of the state. No changes were made as a result of the comment.

The department received 269 comments supporting adoption of the portion of proposed new §65.42 that increases the bag limit from four antlerless deer to five antlerless deer in Pecos, Terrell, and Upton counties.

The department received 58 comments opposing adoption of the portion of proposed new §65.42 that increases the antlerless deer bag limit from two antlerless deer to five antlerless deer in Archer, Baylor, Bell (west of IH35), Bosque, Callahan, Clay,

Coryell, Hamilton, Haskell, Hill, Jack, Jones, Knox, Lampasas, McLennan, Palo Pinto, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Williamson (west of IH35), and Young counties. Of those commenters, 33 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that most counties in the Cross Timbers do not have an overpopulation of deer and that the proposed rule would drastically reduce deer numbers. The department disagrees with the comment and responds that deer densities, herd composition, and relatively low hunting pressure indicate that the new bag limit can be provided in these RMUs without risk of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that some areas don't support the level of harvest being proposed and that due to small tract sizes and highly fragmented habitat there will be an over harvest in Lampasas County. The department disagrees with the comment and responds that although there may be areas within an RMU that for whatever reason (overgrazing, high hunting pressure, etc.) do not contain deer populations representative of the rest of the RMU, the department must regulate harvest on a larger scale because it does not have the resources to establish harvest regulations on a property-by-property basis. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "deer populations are declining, with the buck population average age decreasing and genetically smaller in antler size." The department disagrees with the comment and responds that without specific reference to location it is impossible to address assertions about specific populations; however, data indicate that an increased bag limit may be safely provided in the RMUs affected by the rule. The department also notes that antler size is not an indicator of genetic fitness. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the bag limit is too drastic. The department disagrees with the comments and responds that data indicate that white-tailed deer densities have remained relatively stable in RMUs 22-28 (roughly, the Cross Timbers and Rolling Plains ecoregions). The department believes that increasing the antlerless-deer bag limit in this region will increase total deer harvest, which is imperative for habitat recovery. No changes were made as a result of the comments.

One commenter opposed adoption and stated that nobody needs to shoot more than two does. The department disagrees with the comment and responds that increased doe harvest will benefit habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for antlerless deer east of IH 35 in Bell County should be four because they are a nuisance to farming. The department disagrees with the comment and responds that the rules as adopted are intended only to address recreational hunting. Parks and Wildlife Code, Chapter 43, Subchapter H, provides for the control of nuisance wildlife. No changes were made as a result of the comment.

Ten commenters opposed adoption and stated that the proposed new bag limit for antlerless deer is too drastic. The department disagrees with the comments and responds that deer densities, herd composition, and relatively low hunting pressure indicate that the new bag limit can be provided in these RMUs without risk of depletion or waste. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the deer population is low in Callahan County and the proposed new bag limit would quickly cause problems. The department disagrees with the comment and responds that deer densities, herd composition, and relatively low hunting pressure indicate that the new bag limit can be provided in RMU 27 without risk of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he has seen a decline in deer densities, especially mature does. The department disagrees with the comment and responds that department data indicate that deer densities in the areas affected by the rule are stable or increasing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the county bag limit should be eliminated and replaced with bag limits designated for each resource management unit (RMU) because more deer will be removed under the county bag limits. The department agrees with the comment and responds that in general, the county harvest regulations are consistent with those in other counties within the same RMU. No changes were made as a result of the comment.

Once commenter opposed adoption and stated that the department did not "mention if this would only be for one year and then discussed to see if it helped." The department agrees with the comment but responds that the effectiveness of harvest regulations is constantly evaluated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the population "needs additional does to raise fawns and that the department should make one change at a time to see what happens." The department disagrees with the comment and responds that the doe segment of the deer herd in the affected areas is reproductively stable and in many areas should be reduced in order to protect habitat and maintain adequate recruitment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for antlerless deer in Lampasas and Hamilton counties should remain at two. The department disagrees with the comment and responds that department data indicate that deer densities in RMU 23 (which contains Hamilton and Lampasas counties) are stable or increasing and that additional doe harvest is needed to control populations and protect habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless deer numbers in Bosque County need to be reduced. The department agrees with the comment and responds that the rule as adopted increases the antlerless bag limit in Bosque County. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Bell County east of IH 35 should be included. The department disagrees with the comment and responds that RMU 20 (which contains Bell

County) is characterized by fragmented deer habitat and largely agricultural land use, necessitating a conservative bag limit for antlerless deer in order to preserve reproductive success. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the proposed new rule would deplete the deer herd. The department disagrees with the comments and responds that the rule as adopted will not cause depletion or waste and that the deer population in the affected areas will benefit from an increased harvest of antlerless deer. No changes were made as a result of the comments.

One commenter opposed adoption and stated that antlerless bag limits should not be changed in Taylor County. The department disagrees with the comment and responds that the deer population in RMU 29 (which contains Taylor County) is stable or increasing and will benefit from additional harvest of antlerless deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there will be increase in the harvest of yearling bucks mistaken for does. The department disagrees with the comment and responds that mortalities due to mistaken identification are not believed to be a significant issue in any part of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless bag limits should not be changed in Palo Pinto or Parker counties. The department disagrees with the comment and responds that the deer populations in RMUs 24 and 25 (which contain Palo Pinto and Parker counties) are stable or increasing and that an increase in the harvest of antlerless deer is necessary to prevent habitat degradation. No changes were made as a result of the comment.

The department received 298 comments supporting adoption of proposed new §65.42 that increases the antlerless deer bag limit from two antlerless deer to five antlerless deer in Archer, Baylor, Bell (west of IH35), Bosque, Callahan, Clay, Coryell, Hamilton, Haskell, Hill, Jack, Jones, Knox, Lampasas, McLennan, Palo Pinto, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Williamson (west of IH35), and Young counties.

The department received 28 comments opposing adoption of the portion of proposed new §65.42 that increases the antlerless bag limit from two antlerless deer to five antlerless deer in Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties. Of those commenters, 11 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that deer are not the primary cause of over browsing or grazing. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antlerless bag limit should be no more than four. The department disagrees with the comment and responds that population and harvest data indicate that although habitat in the affected areas is highly variable, there are areas containing suitable habitat that have become saturated with deer, and that whitetails are expanding into marginal to poor habitat and exerting severe browsing pressure. Therefore, an increased harvest is necessary to protect habitat. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that the proposed new antlerless bag limit is excessive. The department disagrees with the comments and responds that population and harvest data indicate that although habitat in the affected areas is highly variable, there are areas containing suitable habitat that have become saturated with deer, and that whitetails are expanding into marginal to poor habitat and exerting severe browsing pressure. Therefore, an increased harvest is necessary to protect habitat. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule should be reviewed after one year. The department agrees with the comment and responds that the effectiveness of harvest regulations is constantly reviewed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department disagrees with the comment and responds that none of the RMUs affected by the rule as adopted have "doe days." No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule will result in buck population declines because hunters will mistake yearling bucks for does. The department disagrees with the comment and responds that mortalities due to mistaken identification are not believed to be a significant issue in any part of the state. No changes were made as a result of the comment.

The department received 250 comments supporting adoption of the portion of proposed new §65.42 that increases the antlerless bag limit from two antlerless deer to five antlerless deer in Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties.

The department received 24 comments opposing adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties. Of those commenters, five elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees with the comment and responds that historical data is not necessary to justify the changes to the rules in this area of the state. In the Panhandle there are areas containing suitable habitat that have become saturated with deer, placing browsing pressure on marginal and poor habitat. Thus, it is desirable to remove more antlerless deer from the population. "Doe days" are being eliminated in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties in order to make harvest regulations consistent across RMUs 31-33 (which contain Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties) so that harvest impacts on populations can be interpreted with greater certainty. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd.

The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "out-of-towners" will view this as a "free-for-all." The department disagrees with the comment and responds that there is no reason to believe that an increased bag limit will encourage anyone to take more deer than the law allows. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a cut off date. The department is unable to determine the point of the comment, but agrees that seasons should have definite opening and closing dates. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November, it is possible that pregnant does could be harvested during the entirety of the entire general season. No changes were made as a result of the comment.

The department received 223 comments supporting adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties.

The department received 30 comments opposing adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Denton and Tarrant counties. Of those commenters, six elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees that historical data is the only way to justify the rules as adopted. While deer densities within RMU 22 are lower than in some other RMUs in the state, deer densities relative to available habitat are increasing, and additional antlerless harvest is necessary to protect habitat. Furthermore, harvest regulations should be consistent throughout RMU 22 so the effects of harvest strategies on the population can be evaluated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunting pressure on public lands in Denton and Tarrant counties will result in severe impacts on antlerless deer. The department disagrees with the comment and responds that public lands in Denton and Tarrant counties, even if placed under severe hunting pressure, are not large enough for the harvest on those properties to affect deer populations on a landscape sale. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "out-of-towners" will view this as a "free-for-all." The department disagrees with the comment and responds that there is no reason to believe that an increased bag limit will encourage anyone to take more deer than the law allows. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November, it is possible that pregnant does could be harvested during the entirety of the entire general season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless hunting in Denton and Tarrant counties should be by permit only. The department disagrees with the comment and responds that while deer densities within RMU 22 are lower than in some other RMUs in the state, deer densities relative to available habitat are increasing, and additional antlerless harvest is desirable to protect habitat. Antlerless harvest by permit only would have the opposite effect. No changes were made as a result of the comment.

The department received 244 comments supporting adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Denton and Tarrant counties.

The department received 58 comments opposing adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties. Of those commenters, nine elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees that historical data is the only way to justify the rules as adopted. While deer densities within those RMUs are lower than in some other RMUs in the state, deer densities relative to available habitat are increasing, and additional antlerless harvest is necessary to protect habitat. Furthermore, harvest regulations should be consistent throughout each RMU so the effects of harvest strategies on each population can be evaluated. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "doe days" should be uniform across the state. The department disagrees with the comment and responds that "doe days" are a management tools to protect reproductive potential in areas where deer populations are subject to high hunting pressure; thus, for most of the state, "doe days" are undesirable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of antlerless deer should be prohibited during the general season

in Hill County because there are very few deer east of IH 35. The department disagrees with the comment and responds that Hill County is divided between RMUs 20-22. In general, this area of the state is characterized by fragmented habitat and fairly intensive agricultural use; however, where suitable habitat occurs, deer populations are stable or increasing and can stand harvest levels higher than those areas where populations are spotty and habitat is less available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "out-of-towners" will view this as a "free-for-all." The department disagrees with the comment and responds that there is no reason to believe that an increased bag limit will encourage anyone to take more deer than the law allows. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the entire general season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of antlerless deer should be stopped in Cooke County except for ranches with population problems. The department disagrees with the comment and responds that while deer densities within RMUs 22 and 24 are lower than in some other RMUs in the state, deer densities relative to available habitat are increasing, and additional antlerless harvest is necessary to protect habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are not enough deer in Cooke County to justify increasing the antlerless harvest. The department disagrees with the comment and responds that while deer densities within RMUs 22 and 24 are lower than in some other RMUs in the state, deer densities relative to available habitat are increasing, and additional antlerless harvest is necessary to protect habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless harvest should be by permit only. The department disagrees with the comment and responds that because the deer densities relative to available habitat are increasing in the affected RMUs, additional antlerless harvest is desirable to protect habitat. Antlerless harvest by permit only would have the opposite effect. No changes were made as a result of the comment.

The department received 298 comments supporting adoption of the portion of proposed new §65.42 that allows antlerless harvest without permits for the entirety of the general season in Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties.

The department received 24 comments opposing adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Bowie and Rusk counties. Of those commenters, nine elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees that historical data is the only way to justify the rules as adopted. Data indicate the deer populations within available habitat in RMUs 15-17 (which contain Bowie and Rusk counties) can withstand additional antlerless harvest, which is expected to result in some relief on habitat. "Doe days" are altered in order to make harvest regulations consistent in each RMU, which will allow the effects of harvest regulations on populations to be interpreted with greater certainty. The department also notes that more detailed biological data justifying resource decisions can be obtained by the public by contacting the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that 16 "doe days" would drastically reduce the deer herd in many regions of Rusk County because land fragmentation and small tract sizes allow too much access to deer. The commenter also stated that the proposal was not scientifically justifiable because the western end of the county does not have the deer population of the southern end. The department disagrees with the comment and responds that although Rusk County straddles three RMUs (15-17), population data and other indices such as hunting pressure suggest that the rule as adopted can be implemented without danger of depletion or waste. The department also notes that since the rules are intended to provide for more consistent analysis of the effectiveness of harvest regulations within each RMU, rather than within each county, the rule as adopted will furnish discrete population information that can be used to modify rules in the future, if warranted. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be full-season either-sex hunting in Bowie and Rusk counties. The department disagrees with the comment and responds that hunting pressure in RMUs 15-17 is significant because of the many small tracts in those RMUs and at this time the department believes that full-season, either-sex hunting would not be biologically appropriate because it could lead to loss of reproductive potential in certain areas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that doe populations should be controlled by "doe days," not by bag limit. The department disagrees with the comment and responds that bag limits are necessary to distribute hunting opportunity equitably under an overall harvest goal, while "does days," where it is necessary to implement them, function to maintain equilibrium between the resource and habitat. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that too many "button bucks" are harvested during "doe days." The department disagrees with the comment and responds that there is no data to suggest that the harvest of "button bucks" is excessive during "doe days," and if a "button buck" is harvested, it counts against a hunter's buck bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested,

but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the entire general season. No changes were made as a result of the comment.

The department received 262 comments supporting adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Bowie and Rusk counties.

The department received 32 comments opposing adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Cherokee and Houston counties. Of those commenters, nine elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that neither Cherokee nor Houston counties has the population to warrant a lengthy doe season. The department disagrees with the comment and responds that doe populations in RMUs 14, 17, and 19 are stable or increasing and that additional antlerless harvest is necessary to prevent habitat degradation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees with the comment and responds that RMUs 14, 17, and 19 are experiencing deer population growth and therefore additional antlerless harvest is desirable to protect habitat. "Doe days" in these RMUs are being standardized in order to make harvest regulations consistent in each RMU, which will allow the effects of harvest regulations on populations to be interpreted with greater certainty. The department also notes that more detailed biological data justifying resource decisions can be obtained by the public by contacting the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deer population in Houston County cannot withstand additional harvest. The department disagrees with the comment and responds that doe populations in RMUs 14 and 19 are stable or increasing and that additional antlerless harvest is necessary to prevent habitat degradation. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be full-season either-sex hunting in Cherokee and Houston counties. The department disagrees with the comment and responds that hunting pressure in RMUs 17 and 19 is significant enough to justify a judicious approach to antlerless harvest regulations; therefore, the department at this time believes that full-season, either-sex hunting would not be biologically appropriate because it could lead to loss of reproductive potential in certain areas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless populations should be controlled by "doe days," not by bag limit. The department disagrees with the comment and responds that bag limits are necessary to distribute hunting opportunity equitably under an overall harvest goal, while "does days," where it is necessary to implement them, function to maintain equilibrium between the resource and habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule would eliminate the population. The department disagrees with the comment and responds that there is no evidence or data to suggest that the rule as adopted will eliminate the deer population in Houston or Cherokee counties; however, the department will continue to monitor population status in those counties to ascertain the effect of the rule on the deer population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the entire general season. No changes were made as a result of the comment.

The department received 255 comments supporting adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Cherokee and Houston counties.

The department received 44 comments opposing adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Anderson, Henderson, Hunt, Leon, Rains, Smith, and Van Zandt counties. Of those commenters, 16 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees with the comment and responds that deer densities within available habitat in RMUs 18 and 19 are increasing, and additional antlerless harvest is desirable to protect habitat. "Doe days" in these RMUs are being standardized in order to make harvest regulations consistent in each RMU, which will allow the effects of harvest regulations on populations to be interpreted with greater certainty. The department also notes that more detailed biological data justifying resource decisions can be obtained by the public by contacting the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the MLD and LAMPS programs provide landowners with enough means to cull does. The commenter stated that increasing the number of "doe days" in Leon County would negatively affect the deer herd because of the numerous small tracts in the county. The department disagrees with the comment and responds that the MLD and LAMPS programs, though useful in terms of managing deer populations, are voluntary and therefore not present on a large enough scale to affect deer populations at the macro level. The

implementation of four "doe days" in the portion of RMU 19 represented by Leon County is indicative of the department's conservative approach to antlerless deer harvest in areas where hunting pressure is significant and habitat is fragmented. No changes were made as a result of the comment.

One commenter opposed adoption and stated that previous regulations allowed doe hunting and the population was decimated. The department disagrees with the comment and responds that there is no historical evidence that the department's regulations caused the decimation of deer populations in Anderson, Henderson, Hunt, Leon, Rains, Smith, or Van Zandt counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless deer harvest in Hunt County should be by permit only. The department disagrees with the comment and responds that because deer densities within available habitat in the affected RMUs (18 and 21) are increasing, additional antlerless harvest is desirable to protect habitat. Antlerless harvest by permit only would have the opposite effect. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless harvest in Hunt County should be full-season. The department disagrees with the comment and responds that hunting pressure in RMU 18 (which contains Hunt County) is significant enough to justify a judicious approach to antlerless harvest regulations; therefore, the department at this time believes that full-season, either-sex hunting would not be biologically appropriate because it could lead to the loss of reproductive potential in certain areas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless harvest should be by MLD or LAMPS permit only in order to allow landowners to control harvest. The department disagrees with the comment and responds that under the rule as adopted, all landowners will have the opportunity to control antlerless harvest, not just MLD and LAMPS cooperators. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are not enough deer to justify increasing the number of "doe days." The department disagrees with the comment and responds that doe populations in RMUs 18 and 19 are stable or increasing and that additional antlerless harvest is necessary to prevent habitat degradation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "this idea was tried in years past and had a negative affect on our deer population to a point where deer were scarce." The department disagrees with the comment and responds that there is no historical evidence that the department's regulations caused the decimation of deer populations in Anderson, Henderson, Hunt, Leon, Rains, Smith, or Van Zandt counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless populations should be controlled by "doe days," not by bag limit. The department disagrees with the comment and responds that bag limits are necessary to distribute hunting opportunity equitably under an overall harvest goal, while "does days," where it is necessary to implement them, function to maintain equilibrium between the resource and habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because of the number of small tracts, the proposed rule will result in "wholesale slaughter" of antlerless deer. The department disagrees with the comment and responds that the scenario envisioned by the commenter is very unlikely. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "there are no deer in this part of the county." The department disagrees with the comment and responds that population data indicate the presence of deer in all counties affected by the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule would decimate the doe population. The department disagrees with the comment and responds that because the deer densities within available habitat in the affected RMUs are increasing, additional antlerless harvest is desirable to protect habitat. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be 16 "doe days" in the affected counties. The department disagrees with the comment and responds that biological indices do not support the implementation of 16 "doe days" at this time. Tract sizes and high hunting pressure, in concert with fragmented habitat, indicate that an extremely limited number of "doe days" is warranted; however, staff believes that additional antlerless harvest would affect reproductive potential. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the timing of the "doe days" would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the entire general season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be full-season either-sex hunting in the affected counties. The department disagrees with the comment and responds that hunting pressure in RMUs 18 and 19 is significant because of the many small tracts in those RMUS and at this time the department believes that full-season, either-sex hunting would not be biologically appropriate because it could lead to loss of reproductive potential in certain areas. No changes were made as a result of the comment.

The department received 269 comments supporting adoption of the portion of proposed new §65.42 that increases the number of "doe days" in Anderson, Henderson, Hunt, Leon, Rains, Smith, and Van Zandt counties.

The department received 61 comments opposing adoption of the portion of proposed new §65.42 that eliminates "doe days" in Grayson County and allows antlerless harvest by permit only. Of those commenters, 13 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that MLD permits are not available for small tracts and the current regulations should be left in place. The department disagrees with the comment and responds that in RMU 21 (where the majority of Grayson County is located) the deer populations are not stable or increasing, as is the case in much of the rest of the state where antlerless harvest opportunity is being increased. Therefore, implementation of consistent harvest regulations across RMU 21 is necessary in order to provide for more accurate population

analysis. The department also notes that antlerless deer may be taken in Grayson County without a permit during the 35-day archery-only open season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has failed to provide enough historical data to make an informed decision regarding these counties. The department disagrees with the comment and responds that RMU 21, unlike most of the rest of the state, is not experiencing deer population growth. "Doe days" in these RMUs are being standardized in order to make harvest regulations consistent in each RMU, which will allow the effects of harvest regulations on populations to be interpreted with greater certainty. The department also notes that more detailed biological data justifying resource decisions can be obtained by the public by contacting the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless populations should be controlled by "doe days," not by bag limit. The department disagrees with the comment and responds that bag limits are necessary to distribute hunting opportunity equitably under an overall harvest goal, while "does days," where it is necessary to implement them, function to maintain equilibrium between the resource and habitat. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be full-season either-sex hunting in Grayson County. The department disagrees with the comment and responds that antlerless populations in RMU 21 are not stable or increasing, as is the case in much of the rest of the state. Full-season, either-sex hunting would probably not result in near-term negative impacts to reproductive potential in Grayson County because the lawful means are limited to archery equipment; however, in order to maintain consistent harvest regulations in RMU 21 for purposes analyzing the effects of the harvest regulations on the population, the department believes it is best to have Grayson County's harvest structure mimic that of the rest of RMU 21. No changes were made as a result of the comment.

One commenter opposed adoption and stated that since the lawful means in Grayson County are restricted to archery equipment, the elimination of "doe days" would result in overharvest of bucks. The department disagrees with the comment and responds that since archery is vastly less efficient than firearms as a means of take, it is unlikely that harvest of bucks in Grayson County could occur at a level to warrant concerns about the population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Grayson County has a big deer population that requires "doe days." The department disagrees with the comment and responds that biological evidence indicates that the antlerless deer population across RMU 21 is not stable or expanding and cannot withstand even limited hunting under "doe days" at this time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the elimination of "doe days" would destroy the buck:doe ratio. The department disagrees with the comment and responds that if anything, the opposite is true. Elevated levels of antlerless harvest can depress reproductive potential. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer in Grayson County are unevenly distributed and that issuing MLD permits on properties too small to support "an individual deer's life cycle" is "counterintuitive to a responsible management plan that emphasizes collective management over management by proxy." The department agrees that suitable habitat is not evenly distributed across Grayson County, but disagrees that MLD issuance is counterintuitive to responsible management. The department responds that the MLD program is a habitat-based program that recommends a harvest strategy consistent with the biological realities of habitat condition and land use practices on tracts of any size. In fact, relatively few properties in Texas are large enough to sustain a deer for the entirety of the life cycle. The department cannot determine what is meant by the term management by proxy and cannot respond. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLD permits should not be issued in Grayson County because the antlerless harvest is too high. The department disagrees with the comment and responds that the MLD harvest is based on a management plan that takes into account the size of a property, land use practices on the property, and population data for the property in order to generate a biologically responsible harvest strategy. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "forcing MLD restrictions on everyone is only going to increase the steps a hunter has to go thru in order to harvest a deer legally." The department disagrees with the comment and responds that no person is required to participate in the MLD program, which is strictly voluntary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that MLD permits are not sufficient for doe harvest. The department agrees with the comment and responds that there is a 35-day archery-only open season during which antlerless deer may be taken without a permit. No changes were made as a result of the comment.

The department received 173 comments supporting adoption of the portion of proposed new §65.42 that eliminates "doe days" in Grayson County and allows antlerless harvest by permit only.

The department received nine comments opposing adoption of the portion of proposed new §65.42 that increases the current 16-day deer season in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties to a full-length season. Of those commenters, none elaborated a specific reason or rationale for opposing adoption. The department nevertheless disagrees with the comments. No changes were made as a result of the comments.

The department received 240 comments supporting adoption of the portion of proposed new §65.42 that increases the current 16-day deer season in Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties to a full-length season.

The department received three comments opposing adoption of the portion of proposed new §65.42 that implements an open season for white-tailed deer in Dawson, Deaf Smith, and Martin counties. All three commenters elaborated a specific reason

or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "research is not sufficient to allow either-sex harvest." The department disagrees with the comment and responds that data indicates the presence of white-tailed deer in the affected RMUs in sufficient numbers to justify a season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless harvest in Deaf Smith County should be by permit only. The department disagrees with the comment and responds that a bag limit of two antlerless deer, given the hunting pressure typical in the affected counties, will not affect reproductive potential. No changes were made as a result of the comment.

The department received 216 comments supporting adoption of the portion of proposed new §65.42 that implements an open season for white-tailed deer in Dawson, Deaf Smith, and Martin counties.

The department received 47 comments opposing adoption of the portion of proposed new §65.42 that implements a special late antlerless and spike-buck season or muzzleloader season in additional counties. Of those commenters, 36 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Two commenters opposed adoption and stated that the antlerless and spike-buck special season should be an early season and not after the rut. The commenter also stated that hunters should be required to harvest a doe before they are allowed to harvest a buck. The department disagrees with the comment and responds that implementing a special season for the take of antlerless and spike-buck deer prior to the general season would conflict with the archery-only season, which is undesirable because the department believes that on properties that are not in the MLD program the time period immediately prior to the general season, hunting should be restricted to archery equipment in order to equitably distribute opportunity between user groups. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it doesn't make sense to have one season that protects young bucks, then another season that targets them. The department disagrees with the comment and responds that the bucks protected by the "antler restriction" rule cannot be lawfully taken during the special late season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are not enough white-tailed deer, so the special season should be restricted to mule deer. The department disagrees with the comment and responds that white-tailed deer populations in the RMUs where the special late season is implemented are able to withstand additional harvest of antlerless and spike-buck deer and in most cases such additional harvest is desirable to prevent habitat degradation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "deer populations are declining, with the buck population average age decreasing and genetically smaller in antler size." The department disagrees with the comment and responds that although in some RMUs the "antler restriction" rule is necessary to address excessive or elevated harvest of young bucks, the deer populations in the RMUs where the special late season is implemented are able to withstand additional harvest of antlerless and spike-buck deer and in most cases such additional harvest is desirable to prevent habitat degradation. The department also notes that the relationship between genetic makeup and antler size is not dependent upon the quantity of genetic material present in an individual. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no special seasons of any kind. The department disagrees with the comment and responds that special seasons are a useful and effective tool to aid landowners and land managers in meeting management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the special late season for antlerless and spike-buck deer discourages people from hunting with muzzleloaders. The department disagrees with the comment and responds that muzzleloaders are lawful during the special late season. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the special late season for antlerless and spike-buck deer kills pregnant does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the general or special late seasons. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the special late season for antlerless and spike-buck deer kills bucks that have shed their antlers. The department responds that bucks that have shed their antlers are vulnerable to accidental harvest, but that it is incumbent upon landowners, land managers, and hunters to be careful. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the special late season for antlerless and spike-buck deer in Bell County should be countywide. The department disagrees with the comment and responds that eastern Bell County, which is in RMU 20, is characterized by spotty habitat and low deer densities. The populations in RMU 20 cannot withstand additional harvest without experience negative reproductive impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the general season is already too long. The department disagrees with the comment and responds that the current length of the general season does not exert a negative impact on populations and is necessary to maximize opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that additional hunting of antlerless deer will hurt the deer herd in Callahan County. The department disagrees with the comment and responds that the deer population in RMU 27 (which contains Callahan County) is stable or increasing and that additional late-season opportunity can be provided without causing de-

pletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the special late season for antlerless and spike-buck deer should be a muzzleloader-only season. The department disagrees with the comment and responds that the hunting pressure exerted by a special late season restricted to muzzleloaders is not enough to achieve the goals of the special late season, which is to allow landowners and land managers to reduce deer populations to protect habitat when general-season harvest is insufficient to accomplish management goals. The department also notes that muzzleloaders are lawful during the special late season. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the special late season for antlerless and spike-buck deer should be restricted to antlerless deer only. The department disagrees with the comments and responds that the special late season is intended to give landowners and land managers a tool to reduce deer populations to protect habitat when general-season harvest is insufficient to accomplish management goals. The department believes that including spike bucks in the bag composition makes the special late season more effective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the special late season for antlerless and spike-buck deer should not be concurrent with the special late youth-only season because if the two seasons run at the same time then the youth-only season is not truly youth-only. The department disagrees with the comment and responds that the youth-only season allows youth to take deer of any type under the county regulations, which is not the case for adults hunting at the same time. Therefore, the opportunity provided during the youth-only season is restricted to youth. No changes were made as a result of the comment.

One commenter opposed adoption and stated that research at Mississippi State University indicates that a spike buck can become a 10-point buck. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that only adult spikes should be taken during the special late season for antlerless and spike-buck deer. The department disagrees with the comment and responds that compliance with a bag limit based on the age of the deer would be virtually impossible in the absence of a reliable method to age deer "on the hoof." No changes were made as a result of the comment.

One commenter opposed adoption and stated that the antlerless deer population in Harrison or Marion counties cannot withstand additional harvest because there are too many hunters hunting on small properties. The department agrees with the comment and responds that there is no special late season in Harrison or Marion counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery equipment should be lawful during the muzzleloader season. The department disagrees with the comment and responds that the muzzleloader-only season is intended to allow a special opportunity for muzzleloader enthusiasts, just as the archery-only season is intended to offer special opportunity to archery enthusiasts. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the muzzleloader season should be eliminated because modern muzzleloaders are no different than modern rifles. The department disagrees with the comments and responds that the muzzleloader season has been since its inception restricted to firearms that are loaded only through the muzzle. The department also notes that annual harvest of deer during the muzzleloader season is biologically insignificant. No changes were made as a result of the comments.

One commenter opposed adoption and stated that if people wanted to shoot with a muzzleloader they could do it during the general season. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the number of spikes taken each year should be reduced. The department disagrees with the comment and responds that the number of deer taken each year, regardless of gender, should be based on sound management decisions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are trespassing problems in Camp County. The department disagrees that trespassing issues are germane to the implementation of a muzzleloader season in Camp County. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a muzzleloader season should be implemented in Bell County. The department disagrees with the comment and responds that a special late antlerless season is more effective in addressing management issues in western Bell County, while in eastern Bell County, which is characterized by fragmented habitat and spotty deer populations, additional harvest would result in negative impacts to reproductive potential. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be an additional bag limit for the late season. The department agrees with the comment and responds that there is no additional bag limit for the late muzzleloader season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Young County should have the muzzleloader season, not the late antlerless and spike-buck season. The department disagrees with the comment and responds that the use of modern firearms during the special late antlerless and spike-buck season is necessary in order to facilitate the goal of the special season, which is to allow landowners and land managers to control populations and protect habitat. The relatively low hunter success with muzzleloaders would make this more difficult. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be expanded to include cartridges chambered in black powder, such as the 45/70 and 45LC. The department disagrees with the comment and responds that it believes that the simplicity of the muzzleloader season, which allows the use of any firearm provided it is loader only through the muzzle, makes it easy to understand and enforce. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should be statewide. The department disagrees with the comments and responds that the muzzleloader season is implemented to provide additional opportunity in RMUs where the population can withstand limited additional harvest, which is possible with muzzleloaders because of the relatively low hunter success rate with muzzleloaders. In most areas of the state that need additional harvest due to habitat concerns, the special late antlerless and spike-buck season is implemented because harvest with modern firearms is very efficient. No changes were made as a result of the comments.

One commenter opposed adoption and stated that muzzleloader seasons should be restricted to muzzleloaders that are truly primitive weapons. The department disagrees with the comment and responds that the muzzleloader season is intended to be a muzzleloader season, not a primitive weapons season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that shotguns with slugs should be lawful if modern muzzleloaders are lawful. The department disagrees with the comment and responds that the muzzleloader season is restricted to firearms that are loaded only through the muzzle. Shotguns are not loaded through the muzzle. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the muzzleloader season for antlerless and spike-buck deer should not be concurrent with the special late youth-only season because if the two seasons run at the same time then the youth-only season is not truly youth-only. The department disagrees with the comment and responds that the youth-only season allows youth to take deer with any lawful means, which is not the case for adults hunting at the same time. Therefore, the opportunity provided during the youth-only season is restricted to youth. No changes were made as a result of the comment.

The department received 315 comments supporting adoption of the portion of proposed new §65.42 that implements a special late antlerless and spike-buck season or muzzleloader season in additional counties.

The department received 91 comments opposing adoption of the portion of proposed new §65.42 that extends the special late youth-only season. Of those commenters, 42 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Twelve commenters opposed adoption and stated that there is plenty of time for youth to hunt during the general season. The department agrees with the comments but responds that it believes it is important to provide a special season restricted to youth in order to encourage adults to mentor youth. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that youth-only seasons are abused by unscrupulous adults. The department disagrees with the comments and responds that it does not believe that abuses, if they are occurring, are at a scale that warrants elimination of a valuable and useful season. No changes were made as a result of the comments.

One commenter opposed adoption and stated that youth seasons should be limited to the underprivileged. The department disagrees with the comment and responds that youth opportunity should be made available to all youth, and that the commission does not have statutory authority to promulgate rules based on income or social status. No changes were made as a result of the comment.

One commenter opposed adoption and stated that youth seasons should be on state lands only. The department disagrees with the comment and responds that limiting youth hunting opportunity to state lands would severely limit participation, which defeats the purpose of the season. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the timing of the season would result in the harvest of impregnated does. The department agrees that pregnant does will be harvested, but notes that since breeding begins in early October, with peak breeding occurring in late November or early December, it is possible that pregnant does could be harvested at any time during the general or special late seasons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season would contradict the special late antlerless and spike-buck season and the muzzleloader season. The department disagrees with the comment and responds that the youth-only season allows youth to take any deer that it is lawful to take during the general season, with any lawful means, which is not the case for adults hunting at the same time during the special late antlerless and spike-buck season or the muzzleloader season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season should be the last two weekends of November and the first two weekends in January. The department disagrees with the comment and responds that the current youth-only seasons are designed to provide opportunity to youth without conflicting with the general season. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be a combined muzzleloader/youth season. The department disagrees with the comments and responds that in the counties where the muzzleloader season is implemented, it is concurrent with the youth-only season. This is not the case in every county, because although the youth-only season is statewide, muzzleloader opportunity cannot be provided if additional harvest is desirable (by more efficient modern firearms during a special late antlerless and spike-buck season) or cannot be offered (due to concerns about negative impacts on reproductive potential). No changes were made as a result of the comments.

One commenter opposed adoption and stated that youth seasons should not run concurrently with archery season. The department disagrees with the comment and responds that overlap between the youth-only season and the archery-only season is limited to one weekend and there is little evidence that user conflicts are occurring as a result. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth season would be unnecessary if the department got rid of the

antler restriction rule, which discourages youth from hunting. The department disagrees with the comment and responds that there is no evidence that youth are discouraged from hunting by the "antler restriction" rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that youth season should be an independent, stand-alone season if modern firearms are used. The department disagrees with the comment and responds that there is no compelling biological, equity, or enforcement rationale for eliminating opportunity that is concurrent with the youth-only season. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the youth season should be spikes and does only. The department disagrees with the comments and responds that the intent of the youth-only season is to offer the same opportunity available during the general season but to restrict it to youth in order to create mentoring opportunities for adults and youth. No changes were made as a result of the comments.

One commenter opposed adoption and stated that additional youth opportunity should be before the general season, not after it. The department disagrees with the comment and responds that the early youth-only season is beneficial because it takes advantage of the anticipation that hunters typically experience prior to the opening of the general season and provides a special opportunity for youth participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season for antlerless and spike-buck deer should not be concurrent with other late seasons because then the youth-only season is not truly youth-only. The department disagrees with the comment and responds that the youth-only season allows youth to take any deer that it is lawful to take during the general season, with any lawful means, which is not the case for adults hunting at the same time during the special late antlerless and spike-buck season or the muzzleloader season. Therefore, the opportunity provided during the youth-only season is restricted to youth. No changes were made as a result of the comment.

The department received 392 comments supporting adoption of the portion of proposed new §65.42 that extends the special late youth-only season.

The department received 33 comments opposing adoption of the portion of proposed new §65.42 that allows the take of antlerless deer without permits on units of United States Forest Service (USFS) land in Wise and Montague counties. Of those commenters, 14 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Five commenters opposed adoption and stated that allowing "doe days" on United States Forest Service lands in Wise County will lead to more accidents because hunter densities are so high. The department disagrees with the comments and responds that the rule was requested by the USFS and that the commission does not have statutory authority to regulate on the basis of safety on lands other department lands. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the rules will result in an overharvest of does. The department disagrees with the comments and responds that the antlerless harvest on USFS lands in Montague and Wise counties is restricted to the youth-only and archery-only seasons and during four "doe days" which is identical to the antlerless opportunity offered in the rest of RMU 22. No changes were made as a result of the comments.

One commenter opposed adoption and stated that does should be harvested only as needed to prevent famine in the deer herd. The department disagrees with the comment and responds that doe harvest is an important component of population control and habitat management, and that doe control is crucial to maintaining the availability of nutrition for deer herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule should apply on all USFS lands. The department disagrees with the comment and responds that the USFS, as a landowner independent of the department, is responsible for harvest management on USFS lands, subject to seasons and bag limits established by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless harvest should be limited to the archery-only season. The department disagrees with the comment and responds that the USFS, as a landowner independent of the department, is responsible for harvest management on USFS lands, subject to seasons and bag limits established by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless hunting should be allowed during the entirety of the general season and that the number of hunters should be limited. The department disagrees with the comment and responds that the USFS, as a landowner independent of the department, is responsible for harvest management on USFS lands, subject to seasons and bag limits established by the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the USFS has not allowed enough public input on special hunts on public lands. The department neither agrees nor disagrees with the comment and responds that the public input process with respect to USFS management is not subject to department control. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of antlerless deer without a permit should be allowed on the Sabine National Forest because it is overrun with does. The department disagrees with the comment and responds that the USFS, as a landowner independent of the department, is responsible for harvest management on USFS lands, subject to seasons and bag limits established by the department. No changes were made as a result of the comment.

The department received 286 comments supporting adoption of the portion of proposed new §65.42 that allows the take of antlerless deer without permits on units of United States Forest Service (USFS) land in Wise and Montague counties.

The department received 18 comments opposing adoption of the portion of proposed new §65.42 that creates an open season for mule deer in Parmer County. Of those commenters, three elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Two commenters opposed adoption and stated that deer should be left to grow. The department disagrees with the comments and responds that the mule deer population in Parmer County is as large as it likely to get, and that hunting opportunity can

be provided without danger of depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there will be a measurable effect on the population if bucks are included in the bag limit. The department disagrees with the comment and responds that the doe segment of the population is the critical component of reproduction biology. Since the rule as adopted allows antlerless take by permit only, the department expects no negative impacts to the population. No changes were made as a result of the comment.

The department received 191 comments supporting adoption of the portion of proposed new §65.42 that creates an open season for mule deer in Parmer County

The department received five comments opposed to the adoption of the amendment to proposed §65.56, which eliminated the open season for lesser prairie chickens. All five commenters stated that it does not make sense to close the season if hunting makes no impact on the population. The department disagrees with the comments and responds that although hunting is not a significant contributor to long-term population declines, the temporary cessation of hunting activity serves a useful purpose in the department's strategic goal of working with landowners to stabilize populations and effect a recovery. No changes were made as a result of the comments.

The department received 227 comments supporting adoption of the proposed new rule.

The Texas Wildlife Association supported adoption of the proposed new section.

The department received 37 comments opposing adoption of the portion of the proposed amendment to §65.72 that creates a slot limit for blue catfish on Lake Lewisville, Lake Richland-Chambers, and Lake Waco. Of those commenters, six elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the proposed rule should be statewide in effect and there should be an oversized blue catfish tag allowing only one blue catfish over 45 inches in length to be retained. The department disagrees with the comment and responds that it is not necessary to apply the rule as adopted on a statewide basis or to create a tag for oversize blue catfish. The rule is adopted in response to situation-specific biological parameters indicating an extremely high harvest of older fish on the affected water bodies, which could have negative impacts on population abundance by affecting spawning and reproduction. The department also notes that tagging systems are expensive to operate and administer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commercial fishery should be regulated, not the recreational fishery. The department disagrees with the comment and responds that there is no commercial effort occurring on the affected water bodies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the slot limit should be 35-40 inches. The department disagrees with the comment and responds that the slot limit being implemented is the optimum management response for providing opportunity while still addressing management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the slot limit should be 35-45 inches. The department disagrees with the comment and responds that the slot limit being implemented is the optimum management response for providing opportunity while still addressing management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the slot limit should be 35-45 inches, with one fish over 45 inches allowed to be retained. The department disagrees with the comment and responds that the slot limit being implemented is the optimum management response for providing opportunity while still addressing management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is too much emphasis on trophy fish. The department disagrees with the comment and responds that the rule as proposed and as adopted is not intended to address to create, manage, or sustain a trophy fishery. While the rule may increase the abundance of trophy catfish, the primary intent of the rule is to protect older and larger fish for breeding purposes and not the interests of any user group. No changes were made as a result of the comment.

The department received 229 comments supporting adoption of the portion of the proposed amendment to §65.72 that creates a slot limit for blue catfish on Lake Lewisville, Lake Richland-Chambers, and Lake Waco.

No groups or associations commented in support of or opposition to the proposed amendment.

The department received 12 comments opposing adoption of the proposed amendment to §65.72 that eliminates the slot limit for largemouth bass on Lake Ray Roberts and returns regulations to the statewide standard regulation. Of those commenters, seven elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the rules should be left alone because people don't like to have to check the rules every year. The department agrees with the comment but responds that regulatory change is necessary when conditions warrant additional protection for the resource. The current regulation was implemented in 1998 in an attempt to explore the feasibility of creating a trophy bass population; however; population structure trend data indicate that the population has not responded to the slot limit, so the department has determined that the rules should revert to the statewide standard. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that removing the slot limit will encourage the proliferation of tournaments on the lake, which will make access for ordinary recreational anglers difficult. The department disagrees with the comment and responds that there is no biological concern at this time with respect to angling pressures resulting from fishing tournaments on Lake Ray Roberts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commenter suggested that tournaments with more than ten boats be required to use a private boat launch facility. The department disagrees with the comment and responds that the commission does not have the statutory authority to regulate use of boat launches. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the slot should be retained and broadened. The department disagrees with the comment and responds that population structure trend data indicate that the population has not responded to the slot limit, so the department has determined that the rules should revert to the statewide standard. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the slot should be changed to 16- 24 inches. The department disagrees with the comment and responds that population structure trend data indicate that the population has not responded to management by slot limit, so the department has determined that the rules should revert to the statewide standard.

No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is too much emphasis on trophy fish. The department disagrees with the comment and responds that the rule as proposed and as adopted is not intended to address to create, manage, or sustain a trophy fishery. No changes were made as a result of the comment.

The department received 222 comments supporting adoption of the proposed amendment to §65.72 that eliminates the slot limit for largemouth bass on Lake Ray Roberts and returns regulations to the statewide standard regulation.

No groups or associations commented in support of or opposition to the proposed amendment.

The department received 223 comments opposing adoption of the portion of the proposed amendment to §65.72 that imposes a bag limit of one alligator gar per day. Of those commenters, 68 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department "has no evidence, no scientific numbers to back up what they are talking about." The commenter stated that too much emphasis was placed on protecting trophy fish and that gar populations are in good shape. The commenter also stated that it is always the commercial anglers that take the hit. The department disagrees with the comment and responds that observed declines in other states, known vulnerability to overfishing, and increased interest in the harvest of trophy gar are a scientifically basis for determining that a conservative management approach is warranted until populations and potential threats can be fully assessed. The department also responds that the rule as adopted in not intended to protect trophy fish, nor it is intended to single out commercial anglers. The rule as adopted is intended to protect older gar until definitive studies can be conducted. No changes were made as a result of the comment.

Eleven commenters opposed adoption and stated that there is no science to verify that alligator gar are in trouble in Texas. The department disagrees with the comments and responds that observed declines in other states, known vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department needed to contact bow fishermen because they are a large source of information. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is too much emphasis on trophy fish. The department disagrees with the comment and responds that the rule as proposed and as adopted is not intended to address to create, manage, or sustain a trophy fishery. While the rule should maintain the abundance of trophy gar, the primary intent of the rule is to protect older and larger fish for breeding purposes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar populations are increasing, not decreasing. The department disagrees with the comment and responds that despite apparent abundance based on anecdotal evidence, harvest and population data suggest that older gar representing the reproductive potential of the population are being harvested at an unsustainable rate that could lead to catastrophic population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar populations have declined in other states because dams prevent the gar from migrating. The department disagrees with the comment and responds that while impoundments may have some effect on gar populations, evidence indicates that other habitat alterations within rivers and overfishing are the most significant factor affecting population status. No changes were made as a result of the comment.

One commenter opposed adoption and stated that river systems in Texas are full of alligator gar. The commenter also stated that the Trinity River is saturated with alligator gar and that restricting harvest will result in the alligator gar consuming other fish. The department disagrees with the comment and responds that abundance per se is not a reliable indicator of population status. Due to their long life history, late maturation, and infrequent spawning, removal of large numbers of adult gar could result in sudden and precipitous population declines. The department also responds that alligator gar are an important predator species in riverine food webs, providing a natural balance to other species by controlling populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the numbers of alligator gar sighted by bowfishers does not indicate any population decrease. The department disagrees with the comments and responds that abundance per se is not a reliable indicator of population status and that anecdotal sighting information is not scientifically valid data. No changes were made as a result of the comment.

One commenter opposed adoption and stated that without data to support a closure, the department is pandering to the trophy fishing industry. The department disagrees with the comment and responds that the rule as adopted is solely based on biological concerns and is not in any way a response to the concerns of any user group. The department also comments that scientifically documented declines in other states and the known vulnerability of the species, along with the specifics of its life history, provide a sound scientific basis for the action taken by the department. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that a bag limit of one alligator gar will make it too expensive to go fishing. The department disagrees with the comment and responds that the rule as adopted affects only the harvest of alligator, one of many fishes that are legal to harvest. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the commercial fishery should be closed and the recreational fishery left as it is. The department disagrees with the comment and responds that among the responsibilities of the department is to provide equitable opportunity where possible to various user groups, and that the implementation of the one-fish bag limit effectively eliminates most aspects of the commercial fishery for gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should retain the current rule but prohibit the used of nets to take alligator gar. The department disagrees with the comment and responds that nets are not a legal means of taking alligator gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should implement a daily bag limit of 50 or 30 fish and evaluate the resource. The department disagrees with the comment and responds that because of the biology of alligator gar, there is concern that continued heavy pressure on large gar could produce a sudden and precipitous depopulation event; therefore, a very conservative harvest regime is necessary while the department investigates population status. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department admits that the severity of population decline is unknown; therefore, the new bag limit will do more harm than good. The department disagrees with the comment and responds that the one-fish bag limit is expected to severely curtail the harvest of older gar and should be sufficient, in the short term, to protect the population while studies are conducted. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that alligator gar are a "trash fish" that depletes populations of more desirable fish. The department disagrees and responds that alligator gar are an important predator species in riverine food webs, providing a natural balance to other species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not use information from other states because their waters are different from Texas waters. The commenter stated that management decisions should be based on "local science." The department disagrees with the comment and responds that there is nothing about Texas waters that would suggest a distinct biological divergence from waters in other states where alligator gar are or have been present, and that valid scientific data collected in other places, because it scientifically valid, is highly useful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has failed to provide any population data that would support regulation of alligator gar. The commenter also stated that it is incumbent upon the department and the commission to conduct research and apply scientifically accurate data to all management strategies of all Texas species. The department disagrees with the comments and responds that observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is a scientifically sound response while populations and potential threats can be fully assessed. As events move forward, the department will continue base management decisions on the best available science. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the alligator gar population has gotten out of control and more harvest is needed, not less. The department disagrees with the comment and responds that limited harvest and population data indicate that current harvest levels in Texas may be unsustainable. Given observed declines in other states, the known vulnerability of the species to overharvest, and the particulars of its life history, the rule as adopted is necessary to prevent potential precipitous declines in populations. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the department should have comprehensive data for specific bodies of water before implementing bag limits on alligator gar. The department disagrees with the comments and responds that it fully intends to gather comprehensive data on specific water bodies, but meanwhile, scientifically valid concerns, based on observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. No changes were made as a result of the comments.

One commenter opposed adoption and stated that alligator are not going extinct because they have been around for thousands of years. The department disagrees with the comment and responds that the historical presence of any species is not in and of itself sufficient evidence to suggest continued presence in the future. No changes were made as a result of the comment.

One person commenter opposed adoption and stated that alligator gar should be stocked by the department if it feels that the species is so important. The department disagrees with the comment and responds that stocking alligator gar will not protect older age classes of fish. Reducing the harvest is intended to enhance sustainability of alligator gar populations so a costly stocking program does not need to be implemented. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is unnecessary because alligator gar could not be extirpated even if that was goal. The department disagrees with the comment and responds that the alligator gar has been extirpated across a large part of its historical range and is threatened through much of the rest it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that not many people hunt gar and they are overabundant. The department disagrees with the comment and responds that department data indicate a robust commercial fishery exists in Texas and that continued heavy pressure on large gar could produce a sudden and precipitous depopulation event. No changes were made as a result of the comment.

One commenter opposed adoption and stated that as a bowfisher he has not seen any declines in alligator gar populations. The department disagrees with the comment and responds that anecdotal observations are not scientifically valid. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar eat a lot of bass and should be killed whenever the opportunity arises. The department disagrees and responds that alligator gar are an important predator species in riverine food webs, providing a natural balance on other species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that many people make a living taking people to fish for gar and that the rule will interfere with that practice. The department disagrees with the comment and responds that the rule as adopted does not prohibit anyone from taking people to fish for gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gar are abundant and that the department is discriminating against bowfishermen. The department disagrees with the comment and responds that abundance per se is not a reliable indicator of population status. Due to their long life history, late maturation, and infrequent spawning, removal of large numbers of adult gar could result in sudden and precipitous declines. The rule will apply equally to all methods of harvest and does not single out bow fishing. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that gar populations in other states don't matter. The department disagrees with the comments and responds that scientific information developed in other states are important and valid in assisting the department to develop appropriate management strategies in Texas waters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that alligator gar have no positive impact on any body of water. The department disagrees and responds that alligator gar are an important predator species in riverine food webs, providing a natural balance on other species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would eliminate bowfishing for other species of gar because of similarity of species. The department disagrees with the comment and responds that there are enough morphological differences between gar species, and especially between mature adults of different gar species, that identification should not be a problem. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no provision for gar caught incidentally on trotlines. The department disagrees with the comment and responds that the rule as adopted affects only gar reduced to possession. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a bag limit of between two and four fish within a slot limit. The department disagrees with the comment and responds that the rule is intended as a proactive, precautionary measure while definitive scientific data on gar populations is developed; therefore, a conservative approach is warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar should be designated a game fish status and regulated via a tag system. The department disagrees with the comment and responds that until a definitive scientific characterization of gar populations can be developed, it would be premature to introduce a tag system for harvest, assuming that a tagging system became necessary. The department also notes that tagging systems are expensive to administer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he found it difficult to believe that alligator gar threatened in any way. The department disagrees with the comment and responds that observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should be evaluated on an annual basis. The department agrees with the comment. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there should be a two-fish bag limits because nobody goes fishing for one fish. The department disagrees with the comment and responds that there are many fishes in addition to alligator gar that can be lawfully taken. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum size limit. The department disagrees with the comment and responds until definitive scientific data can be obtained, a minimum size limit is unnecessary because the one-fish bag limit is sufficient to curtail excessive harvest of large gar. No changes were made as a result of the comment.

One commenter opposed adoption and stated that one alligator gar per day seems inadequate. The department disagrees with the comment and responds that the bag limit as adopted is a proactive, cautionary approach that will protect older gar while definitive population status can be determined. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would eliminate the sport of bowfishing because bowfishers would be fined and jailed, resulting in negative impacts to game fish populations because nongame fish would proliferate in the absence of bowfishers. The commenter stated that there should be a bag limit within a slot limit. The department disagrees with the comment and responds that reduced harvest of alligator gar is not expected to exert negative impacts on any other species and that the most effective way to protect older gar while scientific studies are conducted is to implement a one-fish bag limit. The department also responds that the best way to avoid criminal penalties for violation of fish and game laws is not to violate fish and game laws. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a bag limit of five fish per day. The department disagrees with the comment and responds that the most effective way to protect older gar while scientific studies are conducted is to implement a conservative one-fish bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not be making rules based on the agenda of one group with a vested interest in teaching evolution in public schools. The department disagrees with the comment and responds that the rule as adopted is unrelated to curriculum in schools and does not represent the interests of any particular user group. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be three fish per day until further study can reveal a suitable course of action. The department disagrees with the comment and responds that the most effective way to protect older gar while scientific studies are conducted is to implement a conservative one-fish bag limit. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that harvest of alligator gar should be prohibited until more scientific data justifying harvest can be obtained. The department disagrees with the comments and responds that the one-fish bag limit is sufficient in the short term to prevent overharvest of older gar until the department can obtain definitive scientific data on gar populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a bag limit of three fish per day and a maximum length limit of 36 inches. The department disagrees with the comment and responds that the most effective way to protect older gar while scientific studies are conducted is to implement a conservative one-fish bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of alligator gar should be prohibited for five years, followed by the implementation of a bag limit of one fish per day. The department disagrees with the comment and responds that the one-fish bag limit is sufficient in the short term to prevent overharvest of older gar until the department can obtain definitive scientific data on gar populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of alligator gar should be prohibited for five years. The commenter stated that "removal of even a small percentage of adult alligator gar results in population crashes which take decades to recover. TPWD's own population models show that depletions are occurring in Texas and will continue to occur under a one-fish-per day regime." The commenter also stated that TPWD also has evidence that bow anglers are taking trophy adults from contaminated waters in Texas that have fish consumption advisories. The department disagrees with the comment and responds that the most pressing need at the current time is to curtail the removal of large numbers of older alligator gar in areas where they congregate. The department believes the one-fish bag limit is sufficient in the short term to prevent overharvest of older gar until the department can obtain definitive scientific data on gar populations. The department also responds that it is unlawful to possess fish taken from an area where a consumption ban has been declared by the Texas Department of Health Services and that the department enforces such bans. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the harvest of alligator gar should be prohibited until populations increase. The department disagrees with the comments and responds that the most pressing need at the current time is to curtail the removal of large numbers of older alligator gar in areas where they congregate. The department believes the one-fish bag limit is sufficient in the short term to prevent overharvest of older gar until the department can obtain definitive scientific data on gar populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the bag limit on alligator gar should be one per week because the population is unstable and gar are vulnerable when spawning. The department disagrees with the comment and responds that the most pressing need at the current time is to curtail the removal of large numbers of older alligator gar in areas where they congregate. The department believes the one-fish bag limit is sufficient in the short term to prevent overharvest of older gar until the department can obtain definitive scientific data on gar populations.

One commenter opposed adoption and stated that the harvest of alligator gar should be prohibited. The department disagrees with the comment and responds that the population can withstand limited harvest at the levels implemented by the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for alligator gar should be one per month. The department disagrees with the comment and responds that the population can withstand limited harvest at the levels implemented by the rule as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current provisions regarding alligator gar should be retained. The department disagrees with the comment and responds that observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department "needed to know where it was going with this program." The department agrees with the comment and responds that it does know where it is going. No changes were made as a result of the comment.

The department received 241 comments supporting adoption of the portion of the proposed amendment to §65.72 that imposes a bag limit of one alligator gar per day.

The Texas Bow Fishing Association, the Bow Fishing Association of America, and the U.S. Sportsmen's Alliance opposed adoption of the proposed amendment.

The Piney Woods Sierra Club, Trinity River Expeditions, Center for Biological Diversity, and the Universal Epheshians Church of Lake Livingston commented in support of adoption of the proposed amendment.

The department received 91 comments opposing adoption of the portion of the proposed amendment to §65.42 that creates a closed area for the take of alligator gar on Lake Texoma. Of those commenters, 10 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the alligator gar population at Texoma appears to be doing quite well. The department disagrees with the comment and responds that abundance per se is not a reliable indicator of population status, and apparent abundance even less so. Due to their long life history, late maturation, and infrequent spawning, removal of large numbers of adult gar could result in sudden and precipitous declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that until research data justifies restrictions there should be no limitations on the harvest of alligator gar. The department disagrees with the comment and responds that observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is a scientifically sound response while populations and potential threats can be fully assessed. As events move forward, the department will continue base management decisions on the best available science. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that harvest of alligator gar on Lake Texoma should be prohibited until the population recovers. The department disagrees with the comment and responds that the actual population status of alligator gar on Lake Texoma is unknown at this time; however, the implementation of a conservative one-fish daily bag limit will be effective in the short term in eliminating excessive harvest of older gar until definitive studies can be conducted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that alligator gar have no positive impact on any body of water. The department disagrees and responds that alligator gar are an important predator species in riverine food webs, providing a natural balance to other species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that commercial take of alligator gar should be prohibited. The department disagrees with the comment and responds that until population status can be definitively assessed, the conservative one-fish daily bag should be effective in curtailing the harvest of older gar, which is the trend the department is most concerned about. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be higher and there should be a slot limit. The department disagrees with the comment and responds that the rule is intended as a proactive, precautionary measure while definitive scientific data on gar populations is developed; therefore, a conservative approach is warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no closures of specific areas on lakes, especially if breeding is infrequent and closure may not be effective. The department disagrees with the comment and responds that the rule as adopted is necessary precisely because gar breed infrequently, which makes them vulnerable when they are spawning. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no closures of specific areas. The department disagrees with the comment and responds that protection of spawning areas is necessary because gar breed infrequently in specific areas and only when specific conditions exist. No changes were made as a result of the comment.

The department received 196 comments supporting adoption of the portion of the proposed amendment to §65.42 that creates a closed area for the take of alligator gar on Lake Texoma.

The Texas Bow Fishing Association, the Bow Fishing Association of America, and the U.S. Sportsmen's Alliance opposed adoption of the proposed amendment.

The Piney Woods Sierra Club, Trinity River Expeditions, Center for Biological Diversity, and the Universal Epheshians Church of Lake Livingston commented in support of adoption of the proposed amendment.

The department received 27 comments on the portion of the proposed amendment to §65.72 that allows only one blue catfish of greater than 30 inches per day to be retained on Lake Texoma. Of those commenters, six elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the department should not pander to the trophy fishing lobby. The department disagrees with the comment and responds that the intent of the rule is to protect older and larger fish for breeding purposes and not the interests of any user group. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's survey results are skewed because people retain larger blue catfish because they are harder to catch and more abundant. The department disagrees with the comment and responds that data indicate excessive levels of harvest of larger fish, which means that anglers do not have difficulty harvesting these larger fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are plenty of blue catfish in Lake Texoma. The department disagrees with the comment and responds that harvest data indicate an extremely high harvest of older fish, which are critical to maintaining population abundance. Therefore, the rule as adopted is necessary to protect older fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commercial fishery should be regulated, not the recreational fishery. The department disagrees with the comment and responds that there is no commercial fishery for blue catfish on Lake Texoma. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be one fish 45 inches or greater. The department disagrees with the comment and responds that age distribution correlated to size indicates that a 45-inch limit would not be sufficient to protect enough older fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed bag limit would cause further declines in blue catfish populations. The department disagrees with the comment and responds that allowing one fish longer than 30-inches to be retained per day limit will allow the majority of older fish to remain in the breeding population. No changes were made as a result of the comment.

The department received 228 comments supporting adoption of the portion of the proposed amendment to §65.72 that allows only one blue catfish of greater than 30 inches per day to be retained on Lake Texoma.

No groups or associations commented in support of or opposition to adoption of the proposed amendment.

The department received letters from the Coastal Bend Guides Association, Coastal Conservation Association, Ocean Conservancy, Port Aransas Boatmen Inc., Recreational Fishing Alliance, Saltwater Fisheries Enhancement Association, and the Pew Environmental Group. All of these groups were in support of the entire proposal as written either in the scoping or in the public hearing process or some portion of the proposal. The differences in the proposals will be listed below and then will be grouped into the comments below.

Summarizing where the organizations differ from the proposal, Coastal Conservation Association for Flounder supported a longer closed period for the gig fishery and wanted to allow for some opportunity by hook and line during the closed fishery. In addition, for gray triggerfish they supported a 12" minimum size limit and a 10 fish bag limit instead of the proposal. The Recreational Fishing Alliance did not support the rules regarding

federal consistency and supported a 10-fish bag limit for both the recreational and commercial flounder fishery.

The department received 2,569 comments opposing adoption of the proposed amendment to §65.72 that reduces commercial and recreational bag limits for flounder and would have closed the flounder fishery during the month of November. Of those commenters, 2,475 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

The department received 111 comments opposing adoption of the five-fish recreational bag limit. The department disagrees with the comments and responds that the five-fish recreational bag limit represents a bag limit combined with the other measures taken, will achieve the desired rebuilding target levels while at the same time still providing for recreational fishing opportunity, avoiding disrupting recreational fishing opportunity and enjoyment. Under the five-fish recreational bag limit combined with the other measures, the overall fishing mortality will be reduced by approximately 45% and this will increase the spawning stock biomass by approximately 80% over six years. No changes were made as a result of the comments.

The department received 97 comments opposing adoption of the 30-fish commercial bag limit. The department disagrees with the comments and responds that the 30-fish commercial bag limit represents a bag limit that will achieve the desired rebuilding target levels while at the same time still providing for commercial fishing opportunity, avoiding disrupting commercial fishing opportunity. Under the 30 fish commercial bag limit combined with the other measures, the overall fishing mortality will be reduced by approximately 45% and this will increase the spawning stock biomass by approximately 80% over six years. No changes were made as a result of the comments.

The department received 2272 comments opposing adoption of the proposed November closure and spoke to the need to have some flounder fishing take opportunity in the month of November. The department agrees that a November closure is not absolutely necessary and modified the proposal to allow for a two flounder bag and possession limit in the month of November and lawful means of take shall be by pole-and-line only. Due to the life history cycle of flounder where escapement to the gulf occurs during the fall period the reduced fishing mortality occurring during November with the other measures taken, will achieve the desired rebuilding target levels while at the same time still providing for recreational fishing opportunity, avoiding disrupting recreational fishing opportunity and enjoyment.

Sixteen commenters opposed adoption and stated that the commercial harvest of flounder should be prohibited. The department disagrees with the comments and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the commercial bag limit for flounder should be reduced to one fish per day. The department disagrees with the comments and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the commercial harvest of flounder should be permanently or temporarily prohibited because recreational anglers are the ones paying for management and enforcement, while commercial anglers receive disproportionate benefit relative to their contributions to management and enforcement. The department disagrees with the comments and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. The department also responds that both recreational and commercial anglers pay license fees that permit the privilege of fishing. No changes were made as a result of the comments.

One commenter opposed adoption and stated that commercial fishing should be prohibited from September to December. The department disagrees with the comment and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comment.

Thirty-two commenters opposed adoption and stated that rules governing recreational harvest of flounder should not be altered and that management of the fishery through reduction of opportunity/harvest should be done through regulation of commercial harvest. The department disagrees with the comments and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Two commenters opposed adoption and one stated that the flounder population is increasing based on his observations of anglers and flounder giggers and the other commenter indicated the fishery was not declining. The department disagrees with the comment and supports the conclusion with the long-term fishery independent and fishery dependent sampling programs that both exhibit and the other indicated that the flounder population was not declining. No changes were made as a result of the comment.

Two commenters spoke to increasing the minimum size limit. One commenter opposed adoption and stated that there should be a size restriction to protect female broodstock. One commenter opposed adoption and stated that there should be an 18-inch minimum size limit for commercial anglers. The department disagrees with the comment and responds that there is currently a 14-inch minimum size restriction in effect and that size limit allows for females to reach sexual maturity. Increasing the minimum size limit would not create the overall increase in spawning stock biomass and also since a significant portion of

this fishery is captured by the recreational and commercial gig fishery further increases in minimum size limits may not have the desired impacts due to release mortality after gigging. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the proposed rule is an "over-reaching of state regulators based on less-than-solid research. The proposed amendment to close Texas in November to flounder fishing is particularly offensive and does not show any real, good-faith effort at conservation." The department disagrees with the comment and responds that rule as proposed was nothing less than a good-faith effort to discharge the statutory duty of the department to protect fisheries resources and was based on the comprehensive data collection program that is in place for Texas coastal fisheries. The proposed November closure was the most efficacious management strategy to recover spawning stock biomass in the fishery without extreme disruption of angling opportunity. However, the proposed rule was amended to allow for two fish per day and restricts lawful means to pole-and-line only to allow for some angling opportunity in the month of November.

One commenter opposed adoption and stated that gigging should be a lawful means only for wade-fishing. The department disagrees with the comment and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the proposed November closure should apply only to commercial harvest of flounder. The department disagrees with the comments and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. The two -fish bag limit in November while allowing only hook and line as a lawful means effectively reduces potential commercial harvest of flounder to inconsequential levels in November. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no limitations on recreational harvest of flounder. The department disagrees with the comment and responds that with unlimited recreational harvest of flounder there would be enough effort to continue the current fishing mortality as recently documented. There would be a shift in allocation but this would not necessarily cause any changes in the current flounder stock status. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow recreational anglers to retain at least one fish. The department agrees with the comment and responds that the rule as adopted allows recreational anglers to retain five fish per day, except in November, when the bag limit is two fish per day. The change to allow for the landing of fish in November was a change to the proposed rule.

One commenter opposed adoption and stated that flounder regulations should be by zone or area, with the most restrictive rules implemented in southern waters and the least restrictive in northern waters. The department disagrees with the comment and responds that differential bag limits are more difficult to enforce, can be difficult to create clear delineation of zones, and can create confusion for anglers. In addition, since the biological data suggest that this was not an isolated bay system or clear zonal differences and since the life history suggests flounder escaping and spawning from one bay can lead to aid in repopulating other bay systems that coastwide regulations were prudent. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the flounder fishery should be closed for November and December, but the current bag limits should not be changed. The department disagrees with the comment and responds that although a two-month closure alone would not meet the rebuilding targets and that a combination of the bag limit reductions and closures combined will rebuild the population to targeted levels. In addition the proposed rule and the adopted rule both provide greater fishing opportunity than the two month closure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the commercial bag limit should be three times the recreational bag limit. The department disagrees with the comment and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of the proposed November closure of the fishery, there should be "a slot limit to increase the population of the larger females that generate more larvae." The department disagrees with the comment and responds that a slot limit would not achieve the desired results. The restriction in effect and that size limit allows for females to reach sexual maturity. Increasing the minimum size limit would not create the overall increase in spawning stock biomass and also since a significant portion of this fishery is captured by the recreational and commercial gig fishery further increases in min. size limits may not have the desired impacts due to release mortality after gigging. In addition, since these fish reach maturity relatively quickly and are fairly short lived the slot limit would not provide the protection to spawning biomass as proposed. The rule as adopted is sufficient to reverse declines in spawning stock biomass. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the flounder fishery should be closed to gigging during October, November, and December and that November should be closed to hook and line. The department disagrees with the comment and responds that the decline in spawning stock biomass is additive with respect to all methods of take, regardless of efficiency. The department believes that such a change would exert too drastic a reduction of opportunity. In balancing the interests of various user groups and the methods of take used by each, the department believes that the rule as adopted will equitably distribute opportunity while meeting management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that guiding should be prohibited. The department disagrees with the comment and responds that fishing guides, while they are a

source of fishing mortality when they catch flounder, the overall problem in the fishery is a result of fishing mortality caused by all the different fishing sectors. Removing only the guide fishing mortality would not arrest the declines in spawning stock biomass in the flounder fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that not everyone could catch a limit of five fish. The department agrees with the comment. When you view the hook and line information the average landings per angler trip are less than five fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed recreational bag limit is too low. The department disagrees with the comment and responds that a significant reduction in both recreational and commercial bag limits is necessary to replenish spawning stock biomass in the flounder fishery and that the rule as adopted will accomplish that goal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the flounder fishery should be closed during December as well. The department disagrees with the comment and responds that although a two-month closure would undeniably allow for a quicker recover of spawning stock, the department believes that such a change would exert too drastic a reduction of opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that commercial fishermen should also be banned during November. The department disagrees with the comment and responds that the proposed November closure would also have applied to commercial anglers, and that the rule as adopted applies equally to commercial and recreational anglers. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the flounder fishery should be closed from October 1 to May 1. The department disagrees with the comment and responds that although an eight-month closure of the fishery would undoubtedly achieve management goals in replenishing spawning stock biomass, the denial of opportunity to anglers would be too drastic. The rule as adopted is sufficient to reverse declines in spawning stock biomass while preserving recreational and commercial opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that flounder should be prohibited as bycatch. The department disagrees with the comment and responds that while flounder bycatch has been a significant contributor to fishing mortality in past flounder stock reviews, based on the level of fishing effort in the commercial shrimp fishery it is not as significant in the overall decline of the population as it was in the past. No changes were made as a result of the comment.

One commenter opposed adoption and stated that recreational limit should not be lowered because factors other than fishing are causing population declines. The department disagrees with the comment and responds that the department cannot regulate any factor other than harvest. The department recognizes and demonstrated some of the temperature influences that may be impacting the flounder fishery but within that context the department is still obligated to prevent depletion and to maintain sustainable populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a minimum size limit of 16 inches should be implemented to be consistent with speckled trout limits. The department disagrees with the comment and responds that the biology of flounder is different than the biology of spotted trout; therefore, a standard size limit for both species is not desirable. The department also responds that size limits are not as effective as bag limits in managing flounder under the current circumstances. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the flounder fishery should be open in November, but only for pole-and-line anglers. The department agrees with the comment and changes have been made accordingly.

The department received 5,125 comments supporting adoption of some portion of the proposed amendment. For example, while many did not support the Nov. closure as proposed and would have preferred that it be a longer closure applied only to the gig fishery they did support the bag limit reductions..

The department received 42 comments opposing adoption of the portion of the proposed amendment to §65.72 that addresses species jointly managed by state and federal authorities. Of those commenters, 20 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Three commenters opposed adoption and stated that overfishing is the result of excessive bycatch mortality. The commenter stated that commercial anglers do not pay their fair share for conservation and management and should be more tightly regulated. The department disagrees with the comments and responds that bycatch mortality is not believed to be a significant contributor to overfishing for the species which we have proposed rules. Additionally, the department's primary obligation is to protect fisheries, but it also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to prevent overfishing of affected species. The department also responds that both recreational and commercial anglers pay license fees that permit the privilege of fishing No changes were made as a result of the comments.

One commenter opposed adoption and stated that Texas has great wildlife resources without federal bureaucrats. The department disagrees with the comment and responds that effective management of species that occur in both state and federal waters is impossible without cooperation and communication. The department looks at each of these species and determines whether or not to become completely consistent with federal regulations. At times Texas regulations may be considered to be more conservative or liberal based on this assessment and the application of the appropriate regulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that license buyers pay for management of the fishery in Texas and that the proposed rules remove that control. The department disagrees with the comment and responds that the department remains the sole authority for fisheries management in state waters and that consistency with federal rules is desirable, within reason, to prevent angler confusion and assist law enforcement activities when deemed necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that most of the take of the species affected by the proposed rules occurs outside of state waters. The department agrees with the comment but responds that and responds that consistency with federal rules is desirable, within reason, to prevent angler confusion and assist law enforcement activities when deemed necessary. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the National Marine Fisheries Service (NMFS) and the Gulf of Mexico Fishery Management Council (GMFMC) use flawed methods and data interpretation in their evaluation. The department disagrees with the comments and responds that while management priorities and methodologies differ from state to state and with federal agencies, all entities share one goal, which is to maintain healthy, sustainable fisheries. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is no way anyone could ever count or even guess at the populations of highly migratory species. The department disagrees with the comment and responds that the science regarding fisheries management continues to improve. While there is always uncertainty within the context of the data and then various management measures have levels of risk associated with achieving or not achieving the goal, to take no action or to not continue to obtain better information is not an acceptable option. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the state knows more than the federal government about Texas fisheries. The department disagrees with the comment and responds that it is not a matter of who knows more, but of how interagency cooperation can be accomplished in the pursuit of shared goals to improve and protect shared fisheries. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas should not be consistent with federal rules or the state will lose control of state waters. The department disagrees with the comment and responds that Texas is and will remain the regulator of fisheries resources within state waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas regulations should be separate from federal rules. The department disagrees with the comment and responds that differential regulations are undesirable because they cause angler confusion and can lead to enforcement problems. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the federal government should not control fishing regulations in state waters. The department disagrees with the comments and responds that the federal government does not control fishing regulations in state waters. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that commercial fishing should be prohibited. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that fisheries in state waters should be managed for the benefit of Texans, without regard to issues of consistency. The department disagrees with the comment and responds that in instance in which federal regulations are not believed to place unwarranted burdens on Texas anglers, the department believes it is prudent to make harvest regulations compatible in order to avoid anger confusion and differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal government has too much power. The department disagrees with the comment and responds that the federal government, through the bodies which facilitate inter-jurisdictional management, have the authority to regulate fisheries in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas should have authority to establish regulations based on state findings. The department agrees with the comment and responds that the rules as adopted are an exercise of state authority to regulate fisheries in state waters. The data that these rules are based upon and include shared information that is collected and used by TPWD, NMFS and other scientific information provided from other researchers. No changes were made as a result of the comment.

The department received 180 comments supporting adoption of the proposed amendment.

The Ocean Conservancy commented in support of adoption of the proposed amendment.

The department received 58 comments opposing adoption of the portion of the proposed amendment to §65.72 that imposes length limits for greater amberjack. Of those commenters, 11 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Four commenters opposed adoption and stated that two inches is not going to make a difference. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the commercial catch should be curtailed. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that proposed rule will result in the increased mortality of undersized fish due to stress of catch and release. The department disagrees with the comment and responds that the potential for hooking mortality is present in any species regulated by a size limit. Certainly release mortality can be significant for certain species but within that context the current modeling efforts attempt to include this release mortality into the rebuilding plans. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule would "kill offshore fishing." The department disagrees with the comment and responds that the rule as adopted is not likely to lead to the cessation of angling activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be two fish with a 36-inch minimum size limit. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the state should implement the federal standard for measuring length. The department disagrees with the comment and responds that the lengths established as a total length in the state rule is designed to be equivalent to federal measurement standard (fork length). Historically, Texas has attempted to use a standard length measurement for all coastal fish species to reduce angler confusion No changes were made as a result of the comment.

One commenter opposed adoption and stated that the amberjack fishery should be closed until further study. The department disagrees with the comment and responds that the overwhelming majority of the amberjack harvest occurs in federal waters and that closing state waters to amberjack harvest would cause angler confusion and create problems with respect to differential enforcement. No changes were made as a result of the comment.

The department received 687 comments supporting the adoption of the proposed amendment.

The Ocean Conservancy commented in support of adoption of the proposed amendment.

The department received 48 comments opposing adoption of the portion of the proposed amendment to §65.72 that imposes 20-fish daily bag limit, a 40-fish possession limit, and a 14-inch total length minimum size limit for grey triggerfish. Of those commenters, five elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

Coastal Conservation Association (CCA) commented that they would prefer a 12 inch minimum size limit with a 10 fish bag limit. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that triggerfish are being taken because anglers cannot take snapper. The department disagrees with the comment and responds that certainly there are substitution effects when one fishery is regulated and pressure shifts to other species. Whether increased fishing pressure has been caused by shifting effort or not the current size limits or regulation changes have been established to achieve the management goals. No changes were made as a result of the comment.

One commenter opposed adoption and stated that whenever fisheries are 'studied' they are found to be 'overfished.' The commenter stated that the idea that nuisance fish such as triggerfish are being overfished is "laughable and is not consistent with experiences anglers." The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that commercial harvest should be prohibited. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rules governing recreational harvest should not be altered and that management of the fishery through reduction of opportunity/harvest should be done through regulation of commercial harvest. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters, the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the possession limit is too high. The department disagrees that reducing the possession limit alone would remove opportunity and that by creating consistency with federal regulations will prevent angler confusion and differential enforcement problems. No changes were made as a result of the comment.

The department received 686 comments supporting adoption of the proposed amendment.

The Ocean Conservancy commented in support of adoption of the proposed amendment.

The department received 39 comments opposing adoption of the portion of the proposed amendment to §65.72 that imposes a 22-inch minimum size limit and a two-fish daily bag limit for gag grouper. Of those commenters, eight elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that overfishing is the result of excessive bycatch mortality. The commenter stated that commercial anglers do not pay their fair share for conservation and management and should be more tightly regulated. The department disagrees with the comment and responds that bycatch mortality is not believed to be a significant contributor to overfishing. Additionally, the department's primary obligation is to protect fisheries, but it also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to prevent overfishing of affected species. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that commercial harvest should be prohibited. The department disagrees with the

comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the federal government intended to eliminate fishing. The department disagrees with the comment and responds that it does not believe that the federal government intends to eliminate fishing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the data and methods used by the federal government are "suspicious." The department disagrees with the comment and responds that the science (data and methods) regarding fisheries management continues to improve. While there is always uncertainty within the context of the data and then various management measures have levels of risk associated with achieving or not achieving the goal, to take no action or to not continue to obtain better information is not an acceptable option. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rules governing recreational harvest should not be altered and that management of the fishery through reduction of opportunity/harvest should be done through regulation of commercial harvest. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters, the commission does not regulate commercial fishing in federal No changes were made as a result of the comment.

One commenter opposed adoption and stated that the implementation of the 22-inch minimum size limit will result in a high mortality rate among undersized fish that are caught and released in deeper water. The commenter stated that there should be a two-fish bag limit with a minimum size limit of 14 or 16 inches. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be one fish per day. The department disagrees with the comment and responds that by further reducing the bag limit you will be reducing opportunity and that the bag limit and size limits have been established to reach the goals of the rebuilding plan. While 1 fish would provide greater conservation it is not warranted at this time and in addition by achieving consistency with federal rules we will prevent angler confusion and differential enforcement problems. No changes were made as a result of the comment

The department received 700 comments supporting adoption of the proposed amendment.

The Ocean Conservancy commented in support of adoption of the proposed amendment.

The department received 151 comments opposing adoption of the portion of the proposed amendment to §65.72 that prohibits the catch or possession of Atlantic angel, basking, bigeye sand tiger, bigeye sixgill, bigeye thresher, bignose, Caribbean reef, Caribbean sharpnose, dusky, Galapagos, longfin mako, narrowtooth, night, sandbar, sand tiger, sevengill, silky, sixgill, smalltail, whale, and white sharks. Of those commenters, 25 elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that more sharks are not needed. The department disagrees with the comment and responds that sharks are an important species in marine ecosystems and their protection and sustainability are important. The shark fishery also provides for a significant commercial and recreational fishery in the Gulf of Mexico. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the shark fishery is doing just fine. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that commercial harvest should be eliminated. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters, the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the proposed rule is restrictive and unnecessary. The department disagrees with the comment and responds that the intent of the rule is to establish consistency with federal rules in order to prevent angler confusion and differential enforcement problems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the shark population around Galveston is high already and that conservation is achieved because not everyone harvests sharks. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limits and bag limits to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be one shark per day without regard to species. The department agrees with the comment and responds that the current bag limit is 1 shark per person per day and this bag limit is not being changed as a result of this rule making. No changes were made as a result of the comment.

One commenter opposed adoption and stated that species that eat humans should not be protected. The department disagrees with the comment and responds that sharks are an important species in marine ecosystems and their protection and sustainability are important. The shark fishery also provides for a significant commercial and recreational fishery in the Gulf of Mexico. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that recreational anglers cannot tell one species of shark from another. The department disagrees with the comment and responds that although the intent of the rule is to establish consistency with federal rules in order to prevent angler confusion and differential enforcement problems, it is incumbent upon all anglers to be capable of species identification. In addition to this the department is holding identification workshops along the coast to aid anglers in species identification. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that rules governing recreational harvest should not be altered and that management of the fishery through reduction of opportunity/harvest should be done through regulation of commercial harvest. The department disagrees with the comments and responds that for the species which were discussed the commercial fishery must conform with recreational bag limits while in state waters. Within the context of federal waters the commission does not regulate commercial fishing in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rule would mean the elimination of shark harvest. The department disagrees with the comment and responds that it is unlikely that the rule as adopted will eliminate shark harvest, although it does prohibit the harvest of shark species that have been overfished and those that are deemed to be in such a critical state that take has been prohibited in federal waters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the shark fishery should be closed. The department disagrees with the comment and responds that the rule as adopted is extremely conservative and that complete closure to the take of all shark harvest in state waters is not warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is too complicated for 99% of anglers. The department disagrees with the comment and responds that the rule is based on the stock assessments available, the TPWD monitoring information, and the need to establish federal consistency when warranted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no limits on the harvest of sharks. The department disagrees with the comment and responds that sharks are an important species in marine ecosystems and their protection and sustainability are important. No changes were made as a result of the comment.

One commenter opposed adoption and stated that overfishing is the result of excessive bycatch mortality. The commenter stated that commercial anglers do not pay their fair share for conservation and management and should be more tightly regulated. The department disagrees with the comment and recognizes that bycatch and release mortalities are important in many fisheries. The limits are established considering bycatch and release mortalities and are set to achieve the desired rebuilding. Additionally, the department's primary obligation is to protect fisheries, but it also has an obligation to equitably distribute opportunity among user groups. The department believes that rule as adopted equitably balances the interests of recreational and commercial anglers while meeting the goal of the rules, which is to prevent overfishing of affected species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that sharks are the only fish that can be caught offshore. The department disagrees with the comment and responds that there are many species that can be caught offshore. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed minimum length limits for sharks were unacceptable. The department disagrees with the comment and responds that the increased minimum length limits are established in order to meet rebuilding goals. In addition, establishing consistency with federal rules helps prevent angler confusion and differential enforcement problems. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the 24-inch limit should apply to Spinner sharks in order to prevent confusion with blacktip sharks. The department disagrees with the comment and responds that the intent of the rule is to establish consistency with federal rules in order to prevent angler confusion. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bull and blacktip sharks eat his fish and the possession limits for those species should be increased. The department disagrees with the comment and responds that sharks are an important species in marine ecosystems and their protection and sustainability are important. The shark fishery also provides for a significant commercial and recreational fishery in the Gulf of Mexico. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all shark species should be regulated by a slot limit within minimum and maximum length limits. The department disagrees with the comments and responds that the proposed rule is based on the selection of a minimum size limit to reach the goals of established rebuilding plans. Consistency supports the rebuilding plans and ensures that the goals of the plan will be met while preventing angler confusion and the difficulties of differential enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the shark fishery should be closed. The department disagrees with the comment and responds that there is no biological justification for closing the shark fishery and the department is required to provide opportunity if it can be done without causing depletion or waste. No changes were made as a result of the comment.

The department received 735 comments supporting adoption of the proposed amendment.

The Ocean Conservancy commented in support of adoption of the proposed amendment.

The department received 47 comments opposing adoption of the proposed amendment to §65.73, which creates licensure requirements for fishing guides who use paddle craft. Of those commenters, nine elaborated a specific reason or rationale for opposing adoption. Those comments follow, accompanied by the department's response to each.

One commenter opposed adoption and stated that the public does not need more government licenses. The department disagrees with the comment and responds that this is allowing a guide who operates from paddle craft alone to obtain this license instead of obtaining the current fishing guide license. This is not requiring an additional license. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if a person wants to be a guide, they should be allowed to guide. The department agrees with the comment and this rule provides different and more appropriate training requirements for a paddle craft guide. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many guides and there is no need for more. The department disagrees with the comment and responds that it does not have the statutory authority to limit the number of persons who guide. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the number of guides should be limited by the department because guides are commercial fishermen who plunder state resources. The department disagrees with the comment and responds that it does not have the statutory authority to limit the number of persons who guide. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the department believes there are "unique safety issues associated with the operation of paddle craft are not currently addressed by USCG training and licensure standards," then why does the rules allow a person who holds an all-water guide license to operate as a guide in either a motorized or a non-motorized craft without the necessity of obtaining a paddle-craft license. The department disagrees with the comment and responds that the current training has more emphasis on power boat safety, CPR and first aid components and also information on basic boating rules. This training while not unique covers many of the water safety and boating safety aspects. Those who already have this training and have been guiding on boats and paddlecraft would not need to be licensed in both though the department certainly encourages them to receive all available training. This license requirement was specifically designed for those who are only using paddle craft and would not also be using power boats. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that any person who seeks to guide from a paddle-craft should have to obtain the paddle-craft license. The department agrees with the comments. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of creating a new license, the department should exempt paddle craft operators from the "power vessel" requirement and include training specific to paddlers under the present license. The department agrees with the comment and responds that fishing guides are required by statute to be licensed and that the rule does not create a new license but an alternative license. No changes were made as a result of the comment.

One commenter opposed adoption and stated that as written the requirements are redundant because the American Canoe Union will not certify anyone at level 3 without proof of the Level 2 skills. The department agrees with the comment and has made changes accordingly.

The department received 424 comments supporting adoption of the proposed amendment.

No groups or associations commented in support of or in opposition to adoption of the proposed amendment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §65.3

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 47, which authorizes the commission to adopt rules governing the issuance and use of resident and nonresident fishing guide licenses, including rules creating separate fishing guide licenses for use in saltwater and freshwater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903325
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42

The repeal is adopted under the authority of Parks and Wildlife Code, §42.0188, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, §42.018; Parks and Wildlife Code; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903329
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §§65.42, 65.56, 65.64

The amendments and new section are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires

the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

§65.42. Deer.

(a) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(6) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(7) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons, annual bag limits, and special provisions for white-tailed deer shall be as follows. If Managed Lands Deer Permits (MLDPs) have been issued for a tract of land in any county, they must be attached to all deer harvested on the tract of land, regardless of season. An MLDP buck permit may not be used to harvest or tag an antlerless deer. An MLDP antlerless permit may not be used to tag a buck deer.

(1) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Atascosa County there is a general open season.

(A) Open season: from the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In Atascosa County, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239), and Wilbarger counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(5) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than one buck.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, there is a general open season.

(A) Open season: from first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(7) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) Special late general season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only. Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(D) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except on USFS lands in Montague and Wise counties, where antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(II) On all tracts of land other than those listed in subclause (I) of this clause, no permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(8) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south if U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: Four deer, no more than two bucks and no more than two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from opening day through the Sunday immediately following Thanksgiving Day. From the Monday immediately following Thanksgiving Day until the end of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(9) In Bowie, Cass, Harrison, Marion, Nacogdoches, Panola, Rusk, Sabine, San Augustine, and Shelby counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more two antlerless.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits during the first 16 days of the season. After the first 16 days of the season, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(10) In Anderson, Brazos, Camp, Delta, Fannin, Franklin, Gregg, Grimes, Henderson, Hopkins, Hunt, Lamar, Leon, Madison, Morris, Rains, Red River, Robertson, Smith, Titus, Upshur, Van Zandt, and Wood counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(I) On USFS, Corps of Engineers, and river authority lands in the counties listed in this paragraph, the take of antlerless deer shall be by permit only, except in Fannin County.

(II) On all other tracts of land in the counties listed in this paragraph, antlerless deer may be taken without permits from Thanksgiving Day through the Sunday immediately following Thanksgiving Day. At all other times, antlerless deer may be taken by antlerless MLD permit or LAMPS permit only.

(III) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(11) In Grayson County there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions. Lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer. Antlerless deer may be taken by MLD antlerless permits only. If permits have been issued for the harvest of antlerless deer, they must be attached to all antlerless deer harvested on the tract of land.

(12) In Austin, Bastrop, Bell (east of IH 35), Burleson, Caldwell, Colorado, Comal (east of IH 35), De Witt, Ellis, Falls, Fayette, Freestone, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Limestone, Milam, Navarro, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of IH 35) and Wilson counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two antlerless and no more than two bucks.

(C) Special provisions.

(i) Buck deer. The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(I) at least one unbranched antler; or

(II) an inside spread of 13 inches or greater. The inside spread requirement does not apply to any buck that has an unbranched antler. Not more than one buck with an inside spread of 13 inches or greater may be taken.

(ii) Antlerless deer.

(I) Antlerless deer may be taken by MLD antlerless or LAMPS permits only.

(II) On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(13) In Dallam, Dawson, Deaf Smith, Hansford, Hartley, Martin, Moore, Oldham, Potter, Randall, Sherman, and Swisher counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(14) In Crane, Ector, Loving, Midland, and Ward counties, there is a general open season.

(A) Open season: from the first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) Antlerless deer may be taken by MLD antlerless or LAMPS permits only.

(15) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(16) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(17) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Angelina, Austin, Bastrop, Bowie, Brazoria, Brewster, Caldwell, Camp, Cass Chambers, Cherokee, Colorado, Culberson, DeWitt, Fayette, Fort Bend, Goliad, Gonzales, Gregg, Guadalupe, Hardin, Harris, Harrison, Houston, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Lavaca, Lee, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Orange, Panola, Polk, Presidio, Reeves, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Upshur, Victoria, Walker, Waller, Washington, Wharton, and Wilson counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) Open Season: 14 consecutive days starting the first Monday following the first Sunday in January.

(B) Bag limit: as specified in this section for the general season in the county in which take occurs.

(C) Special provisions:

(i) Buck deer. In any given county, all restrictions established in this subsection for the take of buck deer during the general season remain in effect.

(ii) Antlerless deer. No permit is required for the take of antlerless deer, except:

(I) on properties for which antlerless MLDPs have been issued; and

(II) in the counties that are also listed in paragraph (12) of this section.

(18) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (14) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews, Bailey, Cochran, Gaines, Hockley, Lamb, Martin, Parmer, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Baylor, Bell, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Upton, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, and Milam counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Cherokee, Delta, Fannin, Fort Bend, Franklin, Grayson, Gregg, Hardin, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Walker, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 1 for 30 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903330
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.73

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 47, which authorizes the commission to adopt rules governing the issuance and use of resident and nonresident fishing guide licenses, including rules creating separate fishing guide licenses for use in saltwater and freshwater; and Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life ay be hunted, taken, or possessed.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) The bag and possession limits of this subchapter do not apply to the possession or landing of fish lawfully raised under an offshore aquaculture permit issued under Chapter 57, Subchapter C of this title (relating to Introduction of Fish, Shellfish, and Aquatic Plants).

(4) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait, except for processed catfish heads used as crab-trap bait by a licensed crab fisherman, provided the catfish is obtained from an aquaculture facility permitted to operate in the United States. A person who uses catfish as bait under this subparagraph shall, upon the request of a department employee acting within the scope of official duties, furnish appropriate authenticating documentation, such as a bill of sale or receipt, to prove that the catfish was obtained from a legal source.

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use any vessel to harass fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(5) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(6) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico. No person may land red snapper in Texas for commercial purposes unless that person is in compliance with the provisions of this clause.

(I) Requirement for Individual Fishing Quota (IFQ) vessel endorsement and allocation. No person aboard any vessel shall sell, barter, trade, or exchange red snapper; land or attempt to land red snapper for the purpose of sale, barter, trade, or exchange; or possess red snapper for the purpose of sale, barter, trade, or exchange unless the person possesses a valid federal permit for the harvest of Gulf of Mexico Reef Fish and a valid federal red snapper Individual Fishing Quota (IFQ) vessel endorsement.

(-a-) No person shall harvest or land red snapper for the purpose of sale, barter, trade, or exchange, without holding or being assigned federal IFQ allocation at least equal to the pounds of red snapper landed/docked at a shore side location.

(-b-) At-sea or dockside transfer of red snapper from one vessel to another vessel for the purpose of sale, barter, trade, or exchange, is prohibited.

(-c-) Except as provided in this subparagraph, no person shall purchase, sell, exchange, barter, or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which federal commercial license, permit, and appropriate allocation were issued.

(-d-) On the last fishing trip of the year, a vessel may exceed by 10% the remaining IFQ allocation.

(II) Offloading and transfer. During the hours from 6:00 p.m. until 6:00 a.m. (local time), no person shall offload from a vessel or receive from a vessel red snapper harvested for the purpose of sale, barter, trade, or exchange. No person who is in charge of a commercial red snapper fishing vessel shall offload red snapper from the vessel prior to three hours after proper notification is made to National Oceanographic and Atmospheric Administration (NOAA) Fisheries.

(III) Recreational limits. Persons aboard a vessel for which permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may retain reef fish under the recreational take and possession limits specified in subsection (b) of this section, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

(IV) VMS requirement. No person shall harvest red snapper for the purpose of sale, barter, trade or exchange, from a vessel unless that vessel is equipped with a fully operational and federally approved Vessel Monitoring System (VMS) device. Approved devices are those devices approved by NOAA Fisheries and operating under the requirements mandated by NOAA Fisheries.

(V) Requirement for IFQ dealer endorsement. In addition to the requirement for a federal dealer permit for Gulf reef fish, a dealer must have a federal Gulf red snapper IFQ dealer endorsement in order to receive Gulf red snapper from a commercial fishing vessel. A person aboard a vessel with a federal Gulf red snapper IFQ vessel endorsement must also have a federal Gulf red snapper IFQ dealer endorsement to sell to anyone other than a permitted dealer.

(VI) Requirement for transaction approval code. The owner or operator of a vessel landing red snapper for the purpose of sale, barter, trade, or exchange is responsible for calling National Marine Fisheries Service (NMFS) Office of Law Enforcement at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the required NMFS landing transaction report and, thus, will preclude issuance of the required NMFS-issued transaction approval code. Possession of red snapper for the purpose of sale, barter, trade, or exchange, from the time of transfer from a vessel through possession by a dealer is prohibited unless the red snapper are accompanied by a transaction approval code verifying a legal transaction of the amount of red snapper in possession.

(VII) Wholesale dealers. Wholesale dealers are required to comply with the provisions of Parks and Wildlife Code, §66.019, when acquiring, purchasing, possessing, and selling red snapper. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper on purchases and sales on records.

(VIII) Recreational limit. All persons aboard a vessel for which no commercial vessel permit for Gulf reef fish has been issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit specified in subsection (b) of this section for red snapper, and such fish may not be bartered or sold.

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species.

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(7) Menhaden.

(A) The commercial purse seine season for menhaden (Brevoortia patronus) is open beginning on the third Monday in April and will continue until whichever of the following first occurs:

(i) the annual landings limit for the season has been reached; or

(ii) the first day in November.

(B) The starting point (baseline) for calculating the annual landings limit for 2009 is 31,500,000 pounds. In 2010 and subsequent years, the baseline shall be adjusted upwards in the amount by which the actual catch in the previous season fell short of 31,500,000 pounds; however, the upward adjustment allowed under this subparagraph shall not exceed 3,150,000 pounds. In the event the actual catch in a season exceeds 31,500,000 pounds, a downward adjustment shall be made in the following season in the amount by which the baseline was exceeded in the previous season.

(C) Annual landings may exceed the amount established or calculated in subparagraph (B) of this paragraph by up to 10%.

(D) Landings will be tracked using the Captain Daily Fishing Reports or another tracking mechanism specified by TPWD.

(8) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Except as provided in subparagraph (D) of this paragraph, the statewide daily bag and length limits shall be as follows.
Figure: 31 TAC §65.72(b)(2)(C)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) Freshwater species.
Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Saltwater species
Figure: 31 TAC §65.72(b)(2)(D)(ii) (No change.)

(iii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iv) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(v) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game and non-game fish may be taken by pole and line only in:

(A) community fishing lakes; however, on community fishing lakes that are not within or part of a state park, no person may employ more than two devices (i.e., poles or lines) at the same time;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small-craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday.

It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

§65.73. Fishing Guide License--Required Documentation.

(a) No person shall engage in business as a fishing guide in the coastal waters of this state unless that person possesses a fishing guide license and has paid the appropriate licensure fee for saltwater use.

(b) No person operating a vessel or boat as a fishing guide on or in the coastal waters of this state may be issued a Fishing Guide license unless the person presents documentation to the license deputy that the applicant possesses a valid and appropriate U.S. Coast Guard Operator's License.

(c) No person shall engage in business as a paddle craft fishing guide in the coastal waters of this state unless that person possesses a Paddle Craft All-Water Guide license or an All Water Guide license and has paid the appropriate license fee.

(d) No person may be issued a Paddle Craft All-Water Guide license unless the person possesses proof that the person has successfully completed:

(1) training in CPR and First Aid from a department-approved organization;

(2) a department-approved boater education course or equivalency examination; and

(3) the "Four Star Leader Sea Kayak" training from the British Canoe Union; or

(4) "Coastal Kayak Day Trip Leading" from the American Canoe Association.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2009.

TRD-200903328
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 23, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts adopts an amendment to §3.101, concerning cigarette tax and stamping activities, without changes to the proposed text as published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3345).

Subsection (g) and (g)(1) are amended to reflect the change in the interagency cooperation contract between the comptroller and the Texas Alcoholic Beverage Commission (TABC) for the comptroller to sell cigarette tax stamps to the TABC for the purpose of collecting the cigarette tax at ports of entry into the state. The comptroller, in a new interagency cooperation contract with the TABC, authorizes the TABC to generate a cigarette tax stamp using the TABC's Ports of Entry Tax Collection System (POETCS) and to affix the cigarette tax stamp to cigarette packages for which the cigarette tax has been collected.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §154.021(a) and §154.024(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2009.

TRD-200903362

Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: August 25, 2009
Proposal publication date: May 29, 2009
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER W. LEVEL-OF-CARE SERVICE SYSTEM

DIVISION 5. INTENSIVE PSYCHIATRIC TRANSITION PROGRAM

40 TAC §700.2383

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.2383, without changes to the proposed text published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4497).

The justification for the amendment is to clarify the eligibility for the Intensive Psychiatric Transition Program (IPTP). Specifically, the amendment extends eligibility for the IPTP from children who have had at least three psychiatric hospitalizations in the preceding 12 months to children who have had at least one prior psychiatric hospitalization in the preceding 12 months, if the child is ready for discharge or at imminent risk of a subsequent hospitalization. To be eligible, the child must also be in need of acute stabilization, as determined by the Assistant Commissioner of Child Protective Services or her designee. Decreasing the number of required psychiatric hospitalizations, while clarifying the target population for the IPTP, will allow more children who critically need this service to be served.

The amendment will function by allowing more children to benefit from this type of foster care placement, which will improve their chances of a successful transition into a less restrictive placement and prevent further psychiatric hospitalizations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 1, Rider 31, 81st Legislature, Regular Session, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2009.

TRD-200903422
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2009
Proposal publication date: July 3, 2009
For further information, please call: (512) 438-3437

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 800, General Administration, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3415).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 800 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 800, General Administration.

TRD-200903493
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 11, 2009

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 801, Local Workforce Development Boards, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3415).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 801 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 801, Local Workforce Development Boards.

TRD-200903570
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 13, 2009

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 807, Career Schools and Colleges, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3415).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 807 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 807, Career Schools and Colleges.

TRD-200903571
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 13, 2009

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 819, Texas Workforce Commission Civil Rights Division, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3415).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 819 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 819, Texas Workforce Commission Civil Rights Division.

TRD-200903572
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 13, 2009

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3416).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 835 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 835, Self-Sufficiency Fund.

TRD-200903573
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 13, 2009

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 837, Apprenticeship Training Program, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the May 29, 2009, issue of the *Texas Register* (34 TexReg 3416).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 837 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 837, Apprenticeship Training Program.

TRD-200903574
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: August 13, 2009

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §80.100(b)(1) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR MANUFACTURER'S LICENSE

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Legal Business Name:	
2. Have you ever been licensed by TDHCA?	**[ ]YES [ ] NO If yes, provide license number:**

3. Physical Location Address:	**City, State, ZIP and County**

4. Phone:	**Fax:**

5. Mailing Address:	**City, State, ZIP and County**

6. Date applicant became owner, operator (or date incorporated):	

7. Provide list of all trade names and the names of all other business organizations subject to this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet).

Trade Name	Physical Address, City, State, and ZIP

8. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet).
NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

9. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant.

Legal Name and Title	Mailing Address, City, State and ZIP	Phone

10. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?	**[ ]YES [ ] NO** If YES, complete the required Criminal Conviction Questionnaire ensuring that you provide accurate and thorough details sufficient to persuade the Department that you conviction does not pose a threat to the consumer or the industry. **A DPS criminal check will be performed.**

11. Plant Certification Date:	
12. Production Inspection Primary Inspection Agency Label Prefix:	
13. Design Approval Primary Inspection Agency:	
14. Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):	

15. Will you have a manufacturing plant or service facility in Texas? [ ] YES [ ] NO

If NO, to assure the availability of prompt and satisfactory warranty service, a manufacturer which does not have a licensed manufacturing plant or other facility in Texas from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of $100,000.

Or, to be exempt from the additional security, you must have a bona fide service facility in Texas, pursuant to Section 80.40(d) of the Administrative Rules and Section 1201.106 of the Standards Act.

Name of Facility:
Address:
City/State/ZIP:
Phone:

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] 20 hours of Department Education in Austin, Texas	[ ] $850.00 Manufacturer Licensing Fee [~~] $250.00 Education Fee~~] [~~] $550.00 Retailer Licensing Fee~~] [~~] $900.00 Retailer/Broker Licensing Fee~~] [~~] $900.00 Ret./Installer Licensing Fee~~] [~~] $1250.00 Ret./Brok./Inst. Licensing Fee~~]	[ ] $1000,000 BOND/CD [ ] $100,000 ADDITIONAL BOND/CD [~~] $50,000 BOND/CD~~] [~~] Public Liability Insurance~~] [~~] *Motor Vehicle Liability Insurance~~] [~~] *Cargo Insurance (*if transporting homes)~~] [~~] Retailer's Physical Damage~~]

Figure: 10 TAC §80.100(b)(2) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE
(FOR A RETAILER, BROKER, INSTALLER AND/OR REBUILDER)

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Legal Business Name:	
2. Have you ever been licensed by TDHCA?	[ ]YES [ ] NO If yes, provide license number:
3. Physical Location Address:	**City, State, ZIP and County**
4. Phone:	**Fax:**
5. Mailing Address:	**City, State, ZIP and County**
6. Date applicant became owner, operator (or date incorporated):	

7. Provide list of all trade names and the names of all other business organizations subject to this chapter and the name and address of any such business organization registered with the secretary of state (additional may be listed on a separate sheet).

Trade Name	Physical Address, City, State, and ZIP

8. Provide complete information on ALL owners, principals, partners and/or corporate officers (additional may be listed on a separate sheet).
NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth	SSN

9. Provide complete list of all persons (other than the principals listed above), who directly or indirectly participate in management or policy decisions for this applicant.

Legal Name and Title	Mailing Address, City, State & ZIP	Phone	Date of Birth

10. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, OTHER than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?	[ ]YES [ ] NO If YES, complete the required Criminal Conviction Questionnaire ensuring that you provide accurate and thorough details sufficient to persuade the Department that you conviction does not pose a threat to the consumer or the industry. **A DPS criminal check will be performed.**

11. Indicate which type of license you are applying for:

[ ] **R**= Retailer [ ] **RB**= Retailer/Broker [ ] **RI**=Retailer/Installer [ ] **RBI**=Retailer/Broker/Installer
[ ] **B**= Broker [ ] **I**= Installer [ ] **RB=Rebuilder**

12. As applicable, indicate what function(s) you will be performing:	**[ ] Transporting [ ] Installation**
13. Are you in arrears on any taxes owed to the State of Texas? **Are you in arrears on a guaranteed student loan?**	**[ ] YES [ ] NO** **[ ] YES [ ] NO** If you answered YES to either question, provide proof that you are in good standing with them or that you have made payment arrangements.
Provide physical address, city, state and ZIP, where records will be kept (this can be the principal location or an alternate in-state location):	

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	***Fees:***	***Additional Requirements:***
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $350.00 Broker Licensing Fee [ ] $350.00 Installer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok./Inst. Licensing Fee	[ ] $50,000 BOND/CD ~~[[ ] Public Liability Insurance]~~ ~~[[ ] *Motor Vehicle Liability Insurance]~~ ~~[[ ] *Cargo Insurance (*if transporting homes)]~~ ~~[[ ] Retailer's Physical Damage]~~

Figure: 10 TAC §80.100(b)(3) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR RETAILER WITH BRANCH LOCATIONS LICENSE

(Please type or print clearly.)

Check one: [ ] Corporation [ ] Partnership [ ] Sole Proprietorship [ ] Other

1. Business Name: _____

DBA Name: _____

2. Business Owner's Name:

3. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

	City	State	Zip	County	Phone/Fax
4. Location Address:					
5. Mailing Address:					

6. Date applicant became owner, operator (or date incorporated):

7. Provide complete information on ALL corporate officers or partners.
NOTE: Providing your social security number is optional, HOWEVER, the processing of your application may be delayed without it.

Name and Title	Home Mailing Address	Home Phone	Date of Birth	SSN

8. Have you, or a corporate officer or partner, been convicted of any felony or misdemeanor offense, other than a Class C misdemeanor for traffic violations, within the five years PRECEDING this application?
[ ]YES [ ] NO *If YES, complete the enclosed Criminal Conviction Questionnaire.*

9. Indicate which type of license you are applying for:
[ ] Register a primary location with branch locations specified on an attached sheet (attach bond for each location)
[ ] Register an additional branch location to an existing Retailers Branch

10. What function(s) will you be performing: [ ] Transporting [ ] Installation

11. Name of related person who attended licensing education class:

Are you in arrears on any taxes owed to the State of Texas? [ ] YES [ ] NO
Are you in arrears on a guaranteed student loan? [ ] YES [ ] NO

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] 20 hours of Department Education in Austin, Texas	[ ] $250.00 Education Fee [ ] $550.00 Retailer Licensing Fee [ ] $900.00 Retailer/Broker Licensing Fee [ ] $900.00 Ret./Installer Licensing Fee [ ] $1250.00 Ret./Brok/Inst. Licensing Fee	[ ] $50,000 BOND/CD ~~[ ] Public Liability Insurance~~ ~~[ ] *Motor Vehicle Liability Insurance~~ ~~[ ] *Cargo Insurance (*if transporting homes)~~ ~~[ ] Retailer's Physical Damage~~

MHD FORM 1057 / BRANCH_LOC.DOC Page 1 of 1 **Proposed Form**

Figure: 10 TAC §80.100(b)(4) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR SALESPERSON'S LICENSE

(Please type or print clearly.)

1. Name of Salesperson:		**2. Date of Birth:**	/ /
3. Home Address:		**4. Social Security #:**	- -
City:	**State:**	**Zip:**	
5. Telephone: Home ( )	**Telephone: Work ( )**	**Fax: ( )**	
6. Sponsoring Retailer or Broker:			
Sponsoring Retailer's or Broker's Lic. #:			
7. Business Address:			
City:	**State:**	**Zip:**	

8. List dates, employer and address for each job or position at which you have worked for the past three years. All gaps in employment must be explained.

(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*
(Dates)	*(Employer)*	*(Address)*

9. Have you ever been licensed by TDHCA? YES / NO If so, please provide license number:

10. Have you been convicted of any felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, within the five years PRECEDING this application?
[ ]YES [ ] NO *If YES, complete the enclosed Criminal Conviction Questionnaire.*

Are you in arrears on any taxes owed to the State of Texas? **[ ] YES [ ] NO**
Are you in arrears on a guaranteed student loan? **[ ] YES [ ] NO**

Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. License will be suspended if the education requirements of §1201.104(c) are not successfully completed **within 90 days [~~by the next scheduled course offered~~]** after the date the license is issued.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

(Signature of Applicant) *(Date)* *(Signature of Sponsoring Retailer or Broker)* *(Date)*

Payment

Attach the required license fee of $200.00 (two hundred dollars) to this application. Payment may be made by company or business firm check, money order or cashier's check. Please make payable to: ***Texas Department of Housing and Community Affairs***. Mail to the address listed at the top of this form.

Department Use Only

Fees	[ ] $200.00 License Fee	Date Received:	/ /

Figure: 10 TAC §80.100(b)(7)

Proposed Form

MANUFACTURER'S CERTIFICATE OF ORIGIN
TO A MANUFACTURED HOME

THE UNDERSIGNED MANUFACTURER HEREBY CERTIFIES THAT THE NEW MANUFACTURED HOME DESCRIBED HEREIN, THE PROPERTY OF SAID MANUFACTURER, HAS BEEN TRANSFERRED ON THE DATE SET FORTH HEREIN, SUBJECT TO THE TERMS AND CONDITIONS OF THE INVOICE OR OTHER APPLICABLE AGREEMENT TO:

NAME OF RETAILER	REG. NO.	ADDRESS OF RETAILER	CITY	STATE	ZIP

TRANSFER DATE	MODEL DESIGNATION	DATE OF MANUFACTURE	NUMBER OF SECTIONS	TOTAL SQUARE FEET

LABEL/DECAL NUMBER	SERIAL NUMBER	WEIGHT	SIZE	EXCLUDING HITCH

FIRST ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS		
CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

SECOND ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS		
CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

NOTE: AT FIRST RETAIL SALE THIS CEASES TO EVIDENCE OWNERSHIP OF THE HOME.

CONSTRUCTED FOR:

ENERGY ZONE _____ WIND ZONE _____

ROOF LOAD ZONE _____

THE MANUFACTURER WARRANTS THAT A GOOD AND MARKETABLE TITLE IS BEING TRANSFERRED AND THAT NO OTHER VALID MANUFACTURER'S CERTIFICATE OF ORIGIN IS ISSUED AND OUTSTANDING ON THE MANUFACTURED HOME DESCRIBED HEREIN.

MANUFACTURER OF HOME	REGISTRATION NO.

ADDRESS OF MANUFACTURER

CITY	STATE	ZIP

AUTHORIZED SIGNATURE/TITLE

INVOICE # _____

THE ORIGINAL MCO MUST BE INCLUDED WITH THE NEW HOME SOL APPLICATION WITHIN 60 DAYS FROM THE DATE OF SALE.

Figure: 10 TAC §80.100(b)(11) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Notice of Licensed and Bonded Location

THIS LOCATION IS LICENSED AND BONDED UNDER THE TEXAS MANUFACTURED HOUSING STANDARDS ACT (TEX. OCC. CODE, CHAPTER 1201) AS A RETAIL LOCATION. THE RETAILER'S LICENSE AND THE LICENSE OF EACH SALESPERSON WORKING AT THIS SITE ARE AVAILABLE FOR **REVIEW [~~INSPECTION~~]**.

TO CONTACT THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, MANUFACTURED HOUSING DIVISION, THE STATE **[~~GOVERNMENT~~]** AGENCY THAT REGULATES RETAIL MANUFACTURED HOME SALES,**[~~,~~]** CALL **1-800-500-7074** OR GO TO

WWW.TDHCA.STATE.TX.US/MH

Figure: 10 TAC §80.100(b)(14) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

TEXAS INVENTORY FINANCE SECURITY FORM

The undersigned retailer and creditor-lender have executed a separate security agreement which sets forth the rights and obligations of the two parties in the inventory finance agreement.

This inventory finance security form only applies to the single retail location set forth below, **and the homes reported to the Department on the Texas Inventory Finance Security Form Homes Summary**. The filing of the inventory finance security form with the Texas Department of Housing and Community Affairs perfects the security interest in all reported manufactured homes which have been financed by the creditor-lender or for which the creditor-lender has advanced any funds or has incurred any obligation which enabled the retailer to acquire the manufactured home, any[~~. The filing of the inventory finance security form also perfects a security interest in all~~] manufactured homes subsequently [~~which are hereafter~~] acquired by the retailer, for which the creditor-lender has advanced any funds or the incurrence of the obligation, **shall be reported to the Department on the prescribed Texas Inventory Finance Security Homes Summary**[~~and the creditor-lender is not required to file additional inventory finance security forms~~].

No provision in the security agreement between the parties to an inventory financing arrangement shall in any way modify, change or supersede the requirements of the rules of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs for the perfection of security interest in the manufactured homes which are in the inventory of a retailer.

Name of Retail Business		TDHCA License #	
Location			
City		State	Zip

Signature of Retail Business Agent: _____

Name of Creditor-Lender			
Location			
City		State	Zip

Signature of Creditor-Lender Agent: _____

THE SEPARATE SECURITY AGREEMENT IS DATED: _____

THIS FORM IS DATED: _____

Department Use Only
Date Recorded:
Filing No. Assigned:

Filing No.:

Texas Inventory Finance Form Homes Summary

HUD Label Number	Serial Number

Figure: 10 TAC §80.100(b)(16) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF INSTALLATION (FORM T)

HUD Label or Texas Seal # (s): _____ ***Serial # (s):*** _____

Manufacturer Name: _____ ***License No.*** _____

Home Size - Width / Length: _____ X _____ *Weight* _____ *Date of Manufacture:* ____/____/____ *Model / Name:* _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ Phone Numbers: Home: (___) _____ Work: (___) _____

Mailing Address: _____ City _____ ZIP: _____

Site Address: _____ City _____ ZIP: _____

County Where Home is Installed: _____

Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I (___) II (___) III (___)

Is the home installed in a Humid & Fringe Climate Yes (___) No (___) Was the home labeled for alternate construction. Yes (___) No (___)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

Is home installed in Frost Line Zone? (___) Yes (___) No **Does retailer or installer provide skirting? Yes (___) No (___)**

Is installation part of sales contract of used home? Yes (___) No (___) Not Applicable (___)

New Home - The home has been installed in accordance with:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.

(___) 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - *provide name of system or reference to MHD Approval Letter or registration*_____.

(___) 4. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

To be submitted to the Department along with the required fee no later than the 7th day after which the installation is completed. The Installation Report (Form T) should not [~~no longer~~] be submitted with the title documents.

Per §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this_____ day of _____,_____.

_____ _____

Signature (Retailer/Installer) **Name (print or type)**

Department Use Only	
☐ **Inspected Without Violations**	☐ **Not Inspected, Unable to Locate**
☐ **Inspected With Violations**	☐ **Not Inspected, No Unit At Location**
☐ **Not Inspected, Unit Skirted**	☐ **Not Inspected, Unit Not Accessible**

Inspection Date: _____ **HUD/Seal #:** _____

I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.

Inspector Signature: _____ **Printed Name:** _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(17) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

INSTALLATION CHECKLIST

HUD Label or Texas Seal # (s): _____ ***Serial # (s):*** _____

Date of installation: _____ Wind Zone: _____

Humid/fringe status: _____

Required Testing

Electrical testing - At the time of installation, the following tests must be performed:

___ All site installed or shipped loose fixtures must be polarity tested to determine that the connections have been properly made.

___ All grounding and bonding conductors installed or connected during the home installation must be tested for continuity.

___ An operational test must be performed on all electrical lights, equipment, ground fault circuit interrupters and appliances to demonstrate that all equipment is connected and functioning properly.

___ **All Smoke detectors are functional and in working order.**

Water testing – At the time of installation the water system must be inspected and tested for leaks after completion at the site. (The water heater must be disconnected when using an air-only test.)

Drainage system testing: At the time of installation the drainage system must be inspected and tested for leaks after completion at the site.

Fuel testing procedures: The gas system must be inspected and tested for leaks after completion at the site.

Method of installation – if a copy is not included because the installation was done to a method that the licensed installer uses from time to time, where is a copy of the actual methods in the installer's records?

Once the home installation is complete an Operational Test will be performed to ensure that all doors and windows are operational.

You must complete the following as part of your installation responsibility.

- SITE PREPARATION
- LIST OF EACH DEVICE USED
- LOAD BEARING CAPACITY OF SOIL
- IS A VAPOR RETARDER REQUIRED?

And as applicable:

- SPACING OF PIERS
- SPACING OF ANCHORS
- NUMBER OF DIAGONAL TIES

Was the installer contracting directly with the consumer or were they subcontracted by another retailer or installer? Attach a copy of each contract.

Attach a list of each person who worked on the installation and how to contact them.

If Air Conditioner was provided, name and license number of Air Conditioner installer: _____
_____.

Copy of any required move permits **should be attached**.

Figure: 10 TAC §80.100(b)(19) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

The filing of an application for the issuance of a Statement of Ownership and Location, later than sixty (60) days after the date of a sale to a consumer for residential use, may result in a fee of up to one hundred dollars ($100). Any such application that is submitted late may be delayed until the fee is paid in full.

BLOCK 1: Transaction Identification

This application is for:

Personal Property Transaction	Real Property Transaction
☐ New ~~[home application]~~	☐ New
☐ Used ~~[home application]~~	☐ Used
☐ Lien Assignment	
☐ Other	

(For Department Use Only) Coding:

Lien on file: Y / N Lienholder Code

County Code: Right of Surv.: Y / N

Retailer #: Manufacturer #:

BLOCK 2(a): Home Information (required)

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Complete Serial Number*	*Weight*	*Size**
Section 1:				X
Section 2:				X
Section 3:				X
Section 4:				X

** NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*

2(b) Is home being sold? ☐ No ☐ Yes
If yes, and **if there is/are no HUD Label(s) or Texas Seal**(s) on your home, a Texas Seal will need to be purchased and will be issued to each section of your home at an **additional cost** of $35.00 per section.
Indicate which section(s) needs a Texas Seal(s): *(Single - $35 Double - $70 Triple - $105)*

BLOCK 3: Home Location (required)

Physical Location of Home: *(or 911 address)*

Physical Address (cannot be a Rt. or P. O. Box) *City* *State* *ZIP* *County*

Was home moved for this sale? ☐ No ☐ Yes **If yes, include a copy of moving permit.**
Was Home Installed for this sale? ☐ No ☐ Yes If yes, provide installer information below, if known

Installer Name, address and phone:

BLOCK 4: Ownership Information (required)

4(a) Seller(s) or Transferor(s)		4(b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

4(c) Date of sale, transfer or ownership change:

4(d)	Did the buyer trade-in a home to purchase this home? ☐ No ☐ Yes If yes, the application transferring the ownership to the Retailer must be attached to this application. Provide the following information on the home traded in: HUD Label _____, Serial No. _____

HUD Label #:	Serial #:	GF# (for title co.):

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.

☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):

☐ I (we) own the real property that the home is attached to. ☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

☐ **The applicant or their authorized representative is the holder or servicer of the loan.**

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Legal description must be provided for real property: _____

_____

If a title company, list your file or GF #: _____

☐ **Inventory** – ***(FOR RETAILER USE ONLY)*** Retailer number must be provided in Block 4b if this election is checked.

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

☐ Residential Use (as a dwelling) OR

☐ Non-Residential - Check **one** of the following: ☐ *Business Use* ☐ *Salvage*

BLOCK 8: Liens – Will there be any liens on the home (other than a tax lien)? ☐ No ☐ Yes If yes, complete the below lien information. ~~the Notice of Lien form MUST be completed and attached. To prevent an SOL from being issued without a lien, in the event the Notice of Lien is detached, indicate name and phone number of lienholder's contact person and phone number.~~

~~**Lienholder's Representative: _____ Phone: _____**~~

Date of First Lien:		**Date of Second Lien:**	
Name of First Lienholder:		**Name of Second Lienholder:**	
Mailing Address:		**Mailing Address:**	
City/State/Zip:		**City/State/Zip:**	
Daytime Phone:		**Daytime Phone:**	

BLOCK 9: Special Mailing Instructions.

IF a copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here [~~and enclose the additional fee~~].

Name:	
Company:	
Street Address:	
City, State, Zip:	
Area Code/Phone	

BLOCK 10: Signatures (Notarization is Optional). [~~Certification and Notarization – The statements set forth herein are made under oath and are true and correct.~~]

[☐ ~~*Seller* certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).~~]

[☐ ~~*Seller* certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.~~]

10(a) Signatures [~~Notarized signature~~]of each seller/transferor	10(b) Signatures [~~Notarized signature~~] of each purchaser/transferee or owner
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
_____ *Signature of owner or authorized seller* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*	_____ *Signature of purchaser/transferee or owner* *Sworn and subscribed before me this ____ day of _____, 20___* _____ *Signature of Notary* *SEAL*
10(c) For Lien Assignments Only	
_____ ***Signature of authorized representative for previous lienholder***	_____ ***Signature of authorized representative for new lender***

Figure: 10 TAC §80.100(b)(24) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Addendum to Application for Statement of Ownership and Location

BLOCK 1: Home Information

HUD Label:_____ Serial Number:_____

BLOCK 2: Statement of Facts

(Provide the information checked below.)

1. _____**Physical address is:** _____
(cannot be a Rt. or P.O. Box) *Address* *City* *State* *ZIP* *County*

2. _____**Purchaser's mailing address is:** _____
Address *City* *State* *ZIP* *County*

3. _____**Seller's mailing address is:** _____
Address *City* *State* *ZIP* *County*

4. _____**Date of Sale:** _____

5. _____**Designated Use is:** [ ] Residential Use (as a dwelling) OR
[ ] Non-Residential If non-residential, specify: [ ] *Business Use* **or** [ ] *Salvage*

6. _____**HUD Label number(s):** Section 1 _____
Section 2_____
Section 3_____
_____ Home has no label number(s). I have enclosed $35 per seal , per section (Singlewide $35 Double $70, Triple $105)
_____ Home has no label OR serial number anywhere on the home. I have stated so under oath, in a sworn statement, on the back of this form.

7. Election: _____ Real Property _____ Personal Property If real property, provide the legal description below.

8.[~~7.~~] _____Legal Description:
_____
_____
_____

Block 3: Signature(s)

I hereby state to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs as follows:

In connection with my application for a Statement of Ownership and Location for the above-described manufactured home, I hereby provide the following information as an addendum to my application:

_____ _____
(Seller's Signature) *(Purchaser's Signature)*

_____ _____
(Seller's Signature) *(Purchaser's Signature)*

Figure: 10 TAC §80.100(b)(27) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

TAXING ENTITY APPLICATION FOR TEXAS SEAL

FORM S

Please type or print clearly. Please fill out form completely.

BLOCK 1: Home Information (Must be completed.)

Manufacturer Name:	Year of Manufacture:
Model:	Date of Seizure:

	Size (Width X Length)	*(Department Use Only)* Seal #
Section One:		TXS
Section Two:	X	TXS
Section Three:	X	TXS

~~[BLOCK 2: Payment Information]~~

~~[Single Section: $35]~~	~~[Double Section: $70]~~	~~[Triple Section: $105]~~

~~[Please make cashier's check or money order payable to: *TDHCA*]~~

BLOCK 2[3]: Address Where Seal Is To Be Mailed

Please make sure the address below is complete. This form will be returned to you using a window envelope.

Retailer/Installer License Number (if applicable):

Name:	Day Phone #: ( )
Mailing Address:	
City/State/Zip:	

BLOCK 3[4]: Location of Seal on Manufactured Home

The seal must be placed on the manufactured home after you receive it from this office. If it is a double or triple section home, place the Texas Seal in the same location on each section. Please follow the drawing below for affixing the seal(s) to your home.

BLOCK 4[5]: Certification

By signing, I certify to the best of my knowledge that no serial number, HUD Label or Texas Seal can be found on this manufactured home and that the home to which the Texas Seal will be affixed meets the definition of a HUD-Code manufactured home or a mobile home as defined in Chapter 1201 of the Occupations Code (on back). It is understood that the Texas Seal is issued for identification purposes only and may not be construed to imply that the home is habitable or that the purchaser of the home at a tax sale may obtain a title document from the department without an inspection for habitability.

Signature _____ Title _____ Date _____

Occupations Code

§ 1201.459. Compliance Not Required for Sale for Collection of Delinquent Taxes

(a) In selling a manufactured home to collect delinquent taxes, a tax collector is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector may apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home.

[~~(b) If the home does not have a serial number, seal, or label, the tax collector may:~~]

[~~(1) apply to the department for a seal;~~]

[~~(2) pay the applicable fee; and~~]

[~~(3) recover that fee as part of the cost of the sale of the home.~~]

(c) A [~~The~~] seal issued to a [~~the~~] tax assessor-collector is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership and location [~~document of title~~] from the department without an inspection for habitability.

Definitions

"Mobile Home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

"HUD-code manufactured home" means a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).

Figure: 10 TAC §80.100(b)(29) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

INSTRUCTIONS TO THIRD PARTY CLOSER

[On sale of a manufactured home that is personal property at the time of sale, exchange, or lease-purchase but is to be converted to real property]

[Name and address of title company, attorney, or other party closing the transaction]

Re: Sale, exchange, or lease-purchase of the manufactured home (the "Home") identified by:

Texas seal or HUD label number(s):_____

Serial Number(s):_____

To: _____ (the "New Owner")

Dear Third Party Representative:

The undersigned is licensed as a retailer under the Texas Manufactured Housing Standards Act, Tex. Occ. Code, Chapter 1201 (the "Act") and has entered into an agreement to sell, exchange, or lease-purchase the Home to the New Owner. It is contemplated that in connection with the closing of this transaction, the New Owner will elect to treat the Home as real property in accordance with Section 1201.2055 of the Act. In closing this transaction, you are hereby directed to perform each of the following:

1) Obtain the New Owner(s)' signature(s) on the enclosed Application for Statement of Ownership and Location and have it (them) notarized.

2) Insert your name and address in Block 9 of the Application for Statement of Ownership and Location as the person and place to which the Statement of Ownership and Location should be delivered.

3) Collect the $55 fee for Application for Statement of Ownership and Location and all necessary recording fees.

4) File the **original** completed[,] and executed[~~, and notarized~~] Application for Statement of Ownership and Location **and original** Manufacturer's Certificate of Origin **(MCO) (if the home is new)** with:

Texas Department of Housing and Community Affairs
Manufactured Housing Division
P. O. Box 12489
Austin, TX 78711-2489

This step must BY LAW be completed no later than the 60th day after the closing of the sale, exchange, or lease-purchase. Delay beyond that date may give rise to the incurring of penalties, for which you will be held responsible in the event they are assessed.

5) Upon receipt of a recordable copy of the Statement of Ownership and Location that is issued by the Texas Department of Housing and Community Affairs, Manufactured Housing Division, record that document in the real property records for the county where the Home is reflected as being located.

6) Notify the Tax Assessor-Collector for the county where the Home is located that the Statement of Ownership and Location has been recorded.

7) Provide the Texas Department of Housing and Community Affairs, Manufactured Housing Division with a copy of the file stamped, recorded Statement of Ownership and Location, accompanied by a statement confirming that step 6, above, was done.

Steps 5, 6, and 7 MUST be done within the 60 day period following the date of issuance of the Statement of Ownership and Location by the Texas Department of Housing and Community Affairs.

These instructions are in addition to and not in lieu of any instructions provided by any lender or other party.

In the event that the Texas Department of Housing and Community Affairs, Manufactured Housing Division requires any additional information in order to process the Application for Statement of Ownership and Location, you may contact the undersigned for assistance.

The Application for Statement of Ownership and Location, completed and executed by the undersigned but still requiring the completion and notarized execution by the New Owner(s) is enclosed herewith.

This instructions letter is being sent as an original and a copy. Please acknowledge these instructions in the space provided on the copy and return it to the undersigned at:

[ ]

Please do not hesitate to call if there is anything further you require in this regard.

Sincerely,

Enclosures

Acknowledged this ____ day of _____, ____.

_____

By:_____

Figure: 10 TAC §80.100(b)(30) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, x5-2889, (512) 475-2889 FAX (512) 463-7951 [~~(512) 475-2200 FAX (512) 475-1109~~]
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF [~~LIEN FOR~~] TAX LIEN/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ **OR Serial #:** _____

Tax Roll Account #: _____

Complete 8-Digit Taxing Entity ID #: _____

County Code (3 digits): _____

County Name: _____

Tax Year Recorded/Released: _____

Amount of Lien (Aggregate amount if Central Tax Collector is filing for multiple entities.): _____

Name of person in whose name the manufactured home is listed on the tax roll: _____
(Name)

Taxpayer Address: _____
(Address)

_____
(City) *(State)* *(Zip Code)*

Collector's Name & Name of Taxing Entity: _____

Collector's Address: _____
(Address)

_____
(City) *(State)* *(Zip Code)*

Collector's Phone #: ( )

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

_____ _____
(Signature of Tax Collector or Authorized Representative [~~Collector's Signature~~]) *(Date)*

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

_____ _____
(Signature of Tax Collector or Authorized Representative [~~Collector's Signature~~]) *(Date)*

Department Use Only

Filing NOT processed because:

- ☐ Home is elected as real property.
- ☐ No dollar amount indicated.
- ☐ No serial or label number.
- ☐ Lien listed is not on file.
- ☐ Record received after the filing deadline.
- ☐ No signature was provided.
- ☐ No tax roll account number was provided.
- ☐ No taxing unit ID number was provided.
- ☐ No tax year was provided
- ☐ Other: _____
- ☐ Only one taxing entity and dollar amount can be listed on the form when recording a lien.

Date Rejected:

[~~**Filing NOT Recorded because:**~~]

[☐ ~~No manufactured home ID#(s) provided.~~]

[~~Filing Recorded Date:~~]	[☐ ~~Our records indicate that this home is real property. No lien can be recorded.~~] [☐ ~~Received after the filing deadline.~~] [☐ ~~Required Information not provided.~~]

Figure: 10 TAC §80.100(b)(31) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

HUD Disclosure to Consumer Regarding Dispute Resolution

Name of Retailer or Installer: _____

License No.: _____

Effective: 02/08/08
24 CFR § 3288.5 Retailer notification at sale.

Retailer notice at the time of signing. **At the time of signing a contract for sale or lease for a manufactured home, the retailer must provide the purchaser with a retailer notice. This notice may be in a separate document from the sales contract or may be incorporated clearly in a separate section on consumer dispute resolution information at the top of the sales contract. The notice must include the following language:**

"The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled "Dispute Resolution Process" and "Additional Information— HUD Manufactured Home Dispute Resolution Program" in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturer's, or any other person's, warranty program."

_____
Consumer Signature

_____
Consumer Printed Name

_____
Date

Figure: 10 TAC §80.100(b)(35) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR LICENSE RENEWAL (OTHER THAN SALESPERSONS)

Renew your license in one of 3 ways:

- **NEW! Renew online using a credit card or electronic check.** For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee and proof that you completed the continuing education to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to the MHD's physical location in [~~on the 1st floor at: 221 East 11th Street,~~] Austin, Texas

BLOCK 1: Applicant Information *(Please type or print clearly.)*

License Number: _____ Current Business Name: _____

Expiration Date: ___/___/___ Current Mailing Address: _____

City/State/ZIP: _____

Has there been a business name change that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in location that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, you must submit acceptable evidence that your bond covers the changes.

Has there been any change in corporate officers that you have not yet reported to TDHCA? [ ] Yes [ ] No
If yes, please list name(s) and date(s) of birth on the back of this page.

Have you, or a corporate officer or partner, been convicted in Texas or any other state of any felony or misdemeanor offense, other than a class c misdemeanor for a traffic violation, in the last 24[~~12~~] months? [ ] Yes [ ] No
If yes, please visit our website or contact our office to obtain a *Criminal Conviction Affidavit,* which you must complete and submit with this application.

Have you completed the requirements for continuing education? [ ] Yes [ ] No
If yes, please attach the class certificate.

Are you in arrears on any taxes owed the State of Texas? [ ] Yes [ ] No
If yes, please call Tax Assistance at (512) 463-4600 or 1-800-252-5555.

Are you in arrears on a guaranteed student loan? [ ] Yes [ ] No
If yes, please call the Guaranteed Student Loan Corporation at (512) 835-1900.

Attach a list of all related persons to this application as required by §1201.103 of the Standards Act.

BLOCK 2: License Type and Fees

Please check one:

[ ] Retailer (R)	$550	[ ] Retailer/Installer (RI)[*]	$900
[ ] Broker (B)	$350	[ ] Retailer/Broker/Installer (RBI)[*]	$1250
[ ] Installer (I)[*]	$350	[ ] Salvage Rebuilder (S)	$550
[ ] Retailer/Broker (RB)	$900	[ ] Manufacturer (M)	$850

[~~* Installers must have a current certificate of insurance on file or submit it with this notice.~~]

BLOCK 3: Certification

With knowledge of the penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

_____ (___)___-_____ _____ _____
Printed Name and Title | Phone Number | Signature of Owner or Corporate Officer | Date

Department Use Only: [ ] License Renewal Fee Received Date Received: ___/___/___

MHD FORM 1053 / RBIMS_RENEWAL.DOC Page 1 of 1 Proposed Form

Figure: 10 TAC §80.100(b)(38) **Proposed Form**

PROVISIONAL [~~PROBATIONARY~~] INSTALLATION

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

You may fax or email [~~Fax~~] this report within 3 working days from the date of installation to your assigned field office. Mail the original and fee by regular mail to the address on the letterhead.

NOTICE OF INSTALLATION (FORM T)

HUD Label or Texas Seal # (s): _____ ***Serial # (s):*** _____

Manufacturer Name: _____ ***License No.*** _____

Home Size - Width / Length: _____ X _____ *Weight* _____ *Date of Manufacture:* ____/____/____ *Model / Name:* _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ Phone Numbers: Home: (___) _____ Work: (___) _____

Mailing Address: _____ City _____ ZIP: _____

Site Address: _____ City _____ ZIP: _____

County Where Home is Installed: _____

Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I (___) II (___) III (___)

Is the home installed in a Humid & Fringe Climate Yes (___) No (___) Was the home labeled for alternate construction. Yes (___) No (___)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

Is home installed in Frost Line Zone? (___) Yes (___) No **Does retailer or installer provide skirting? Yes (___) No (___)**

Is installation part of sales contract of used home? Yes (___) No (___) Not Applicable (___)

New Home - The home has been installed in accordance with:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

Used Home:

(___) 1. Manufacturer's Home Installation Instructions (provide page number or option _____).

(___) 2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.22, 80.23, 80.24, and 80.25.

(___) 3. A stabilization system registered with the Department in accordance with 10 TAC §80.26 - *provide name of system or reference to MHD Approval Letter or registration*_____.

(___) 4. A Special Foundation System *(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).*

FOR USED HOMES, IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

To be submitted to the Department along with the required fee no later than the 3rd day after which the installation is completed. The Installation Report (Form T) should not [~~no longer~~] be submitted with the title documents.

Per §1201.206(i): On secondary moves the notice must be accompanied by either the original notice of installation or a certification that a true and correct copy of the notice of installation has been provided to the chief appraiser of the county where the home is installed. The delivery of the copy of the notice to the chief appraiser may be accomplished by either certified mail or by electronic mailing of the electronically reproduced document in a commonly readable format.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct. Executed this_____ day of _____,_____.

_____ _____

Signature (Retailer/Installer) **Name (print or type)**

NOTE: A minimum of five (5) provisional [~~probationary~~] installations must be inspected without violations for a provisional [~~probationary~~] installer's license to become a full installer's license.

Department Use Only	
☐ **Inspected Without Violations**	☐ **Not Inspected, Unable to Locate**
☐ **Inspected With Violations**	☐ **Not Inspected, No Unit At Location**
☐ **Not Inspected, Unit Skirted**	☐ **Not Inspected, Unit Not Accessible**

Inspection Date: _____ **HUD/Seal #:** _____

I hereby certify on this _____ day of _____, 20_____ that the above inspection results are true and correct to the best of my knowledge and belief.

Inspector Signature: _____ **Printed Name:** _____

DRAW MAP BELOW

Figure: 10 TAC §80.100(b)(39) **Proposed Form**

This notice must be sent by certified mail, return receipt requested, to the owner of record of the manufactured home described below and each lien holder, including any holder of a tax lien, reflected in the official records of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as of the date that this notice is sent.

IMPORTANT NOTICE OF INTENT TO ACQUIRE OWNERSHIP OF AN ABANDONED MANUFACTURED HOME

RE: Manufactured Home with HUD label, Texas Seal and/or Serial Number(s) _____ _____ (the "Home")

Name and address of owner(s) of record:

_____
_____
_____
_____

Name and address of 1st lienholder of record:

_____
_____
_____

Name and address of any intervening owners of liens or equitable interest:

_____
_____
_____
_____
_____

Name and address of 2nd lienholder of record:

_____
_____
_____

Name and address of Tax Assessor-Collector where home is located:

_____
_____
_____

Dear _____:

The above-referenced Home is on my real property located at _____ _____ and appears to have been abandoned. It has been continuously unoccupied for at least four months, and the following indebtedness, secured by the Home, is delinquent (insert description of indebtedness including holder/payee):

_____

_____

It is my INTENT TO DECLARE THE HOME ABANDONED. It is my intent forty-five (45) days from the date of this letter, to declare the Home to be abandoned and to apply to the Texas Department of Housing and Community Affairs, Manufactured Housing Division, for a Statement of Ownership and Location with respect to the Home, reflecting me to be the owner of the Home, free and clear of any liens, all in accordance with Tex. Occ. Code, §1201.217.

_____ _____

(Printed Name of Real Property Owner) *(Signature of Real Property Owner)*

Figure: 10 TAC §80.100(b)(40) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Internet Address: www.tdhca.state.tx.us/mh/index.htm

AFFIDAVIT OF FACT FOR ABANDONMENT
(Sworn Statement)

BLOCK 1: Home Information

Manufacturer:_____ Model:_____

Serial Number:_____ Label # and/or Seal #:_____

BLOCK 2: Statement of Facts

I own the real property on which the manufactured home identified above is located. Such manufactured home has been continuously unoccupied for at least four (4) months. Any indebtedness secured by the manufactured home is delinquent. I have made reasonable efforts to locate and give notice to all owners and lienholders of record with the Department that I am seeking to acquire ownership of this manufactured home pursuant to Tex. Occ. Code, Section 1201.217, Manufactured Home Abandoned. The manufactured home has remained on the real property for at least forty-five (45) days after the date that each such notice was postmarked. As evidence that all notice requirements have been fulfilled and that I am entitled to a statement of ownership and location reflecting me as the owner of the manufactured home, I have attached a true and correct copy of each of the following documents:

- Each notice and the return receipt for certified mail that was sent to the following:
  - Each owner of the home at the address(es) on the statement of ownership and location records of the Department.
  - Each lienholder, including the county in which the home is located, and each holder of a recorded tax lien, on the statement of ownership and location records of the Department.
  - **Each intervening owner of lien or equitable interest.**
- Evidence that any indebtedness secured by the manufactured home is delinquent.
- **Neither the affiant nor any person related or affiliated with them has now, or has ever, owned an interest in the manufactured home.**

  For any certified mail for which the return receipt indicated that such mail was unclaimed or undeliverable, I have made a reasonable effort to determine the location of the party to whom such mail was addressed and, if I could locate an alternative address, I sent them the same notice at the alternative address by certified mail, and copies of the return receipts for such certified mail are attached.

I certify that my ownership of the above-described real property is duly recorded in the deed or real property records for the county where such property is located.

BLOCK 3: Signatures *(Notarization is REQUIRED)*

_____ _____
(Signature) *(Signature)*

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this _____ day of _____ 20 ____.

_____
(Name of Notary)

_____ *SEAL*
(Notary Public)

_____
(Commission Expires) *Notary Public State of Texas*

Figure: 10 TAC §80.100(b)(42) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

SALESPERSON'S APPLICATION FOR LICENSE RENEWAL

Renew your license in one of 3 ways:

- Renew online using a credit card or electronic check. For eligibility requirements and other information, visit us on the web at www.tdhca.state.tx.us/mh/industry-info.htm. Please help us improve by completing the survey afterward.
- Complete this application and mail it with the renewal fee to: TDHCA, P.O. Box 12489, Austin, Texas 78711-2489
- Deliver in person this completed application with the fee to **the** MHD's **physical location in**~~[on the 1st floor at: 221 East 11th Street,]~~ Austin, Texas

Type	Renewal Fee	1 to 90 days late (1 ½ times the renewal)	90 to 364 days late (2 times the renewal fee)
Salesperson	$200	$300	$400

BLOCK 1: Salesperson Information *(Please type or print clearly.)*

License Number: _____ Expiration Date: / /

Name: _____

Current Mailing Address: _____

City/State/ZIP: _____

Home Phone: _____

Work Phone: _____

Have you been convicted in Texas or any other state of a felony or misdemeanor offense, other than a Class C misdemeanor for a traffic violation, in the last 24 months? [ ] Yes [ ] No

If yes, please visit our website or contact our office to obtain a *Criminal Conviction Affidavit.*

Have you completed the requirements for **continuing education?** [ ] Yes [ ] No
If yes, please attach the class certificate.

BLOCK 2: Employer Information

Name of Sponsoring Retailer **or Broker**: _____

Sponsoring Retailer's **or Broker's** Address: _____

City/State/ZIP: _____

Sponsoring Retailer's **or Broker's** License#: _____

BLOCK 3: Certification

License is subject to revocation, if the Department is **NOT** notified in writing of any changes in the information given on this application or if there is a violation of the law. Evidence that the continuing education requirements of §1201.113 have been completed must be received by the Department before the license can be renewed.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents is true and correct.

_____ _____ _____ _____
(Signature of Applicant) *(Date)* *(Signature of Sponsoring Retailer **or Broker**)* *(Date)*

Department Use Only: [ ] License Renewal Fee Received Date Received: / /

Figure: 10 TAC §80.100(b)(43) **Proposed Form**

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-3506
Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR CONTINUING EDUCATION [~~LICENSE INSTRUCTION~~] PROVIDER

(Please type or print clearly.)

Check one: [ ] 20 Hour Initial Licensing Class [ ] 8 Hour Continuing Education Class

1. Legal Business Name:	
2. Have you ever been an approved Continuing Education [~~License Instruction~~] Provider by TDHCA?	[ ]YES [ ] NO If yes, provide dates:

3. Physical Location Address:	**City, State, ZIP and County**

4. Phone:		**Fax:**	

5. Mailing Address:	**City, State, ZIP and County**

6. Email Address:	

7. Provide complete list of all instructors (additional instructors may be listed on a separate sheet). Attach biographies and credentials for each instructor.

Legal Name and Title	Mailing Address, City, State and ZIP	Phone

Certification

Continuing Education [~~License Instruction~~] Provider is subject to revocation, if the Department is NOT notified in writing of any changes in the information given on this application or if there is a violation of the law.

Included with this application is a true and correct copy of the course material to be used for said course.

With knowledge of penalties for false statements, I certify that to the best of my knowledge all information submitted on this application and on all attached documents are true and correct.

(Signature of Applicant or President, if incorporated) *(Date)* *(Signature of Secretary, if incorporated)* *(Date)*

Department Use Only

Education:	*Fees:*	*Additional Requirements:*
[ ] Copy of Course Material	[ ] $300.00 Fee	[ ] Biography for each instructor [ ] Credentials for each instructor [ ] Schedule of fees to be charged for the course

Figure: 25 TAC §157.133(a)(3)

Legend: D = Desired
E = Essential

Support (Level III) Stroke Facility Designation Criteria

Support (Level III) Stroke Facilities (SSFs) - Provides resuscitation, stabilization and assessment of the stroke victim and either provides the treatment or arranges for immediate transfer to a higher level of stroke care either a Comprehensive (Level I) Stroke Center or Primary (Level II) Stroke Center; provides ongoing educational opportunities in stroke related topics for health care professionals and the public; and implements stroke prevention programs.

A. Stroke Program	
1. Identified Stroke Medical Director who: a. Is actively credentialed by the hospital to provide stroke care b. Is charged with overall management of the stroke care provided by the hospital c. Shall have the authority and responsibility of clinical oversight of the stroke program. This is accomplished through mechanisms that may include, but are not limited to: credentialing of staff that provide stroke care; providing stroke care; development of treatment protocols; cooperating with nursing administration to support the nursing needs of the stroke patient; coordinating the performance improvement peer review; and correcting deficiencies in stroke care i. There shall be a defined job description ii. There shall be an organizational chart delineating the Stroke Medical Director's role and responsibility iii. The Stroke Medical Director shall be credentialed by the hospital to participate in the stabilization and treatment of stroke patients using criteria such as board-certification/board eligibility; stroke continuing medical education; compliance with stroke protocols, and participation in the Stroke Process Improvement (PI) program d. The Stroke Medical Director shall participate in a leadership role in the hospital and community	E
2. Identified Stroke Nurse Coordinator who: a. Is a Registered Nurse b. Has successfully completed and is current in Advanced Cardiac Life Support c. Has successfully completed 8 hours of stroke continuing education in the last 12 months and has successfully completed an approved National Institutes of Health Stroke Scale (NIHSS) certification course d. Has successfully completed an (NIHSS) certification course by an approved certification program or a Department of State Health Services approved equivalent e. Has the authority and responsibility to monitor the stroke patient care from Emergency Department (ED) admission through stabilization and transfer to a higher level of care or admission i. There shall be a defined job description ii. There shall be an organizational chart delineating roles and responsibilities iii. The Stroke Nurse Coordinator shall receive education and training	E

designed for his/her role which provides essential information on the structure, process, organization and administrative responsibilities of a PI program to include stroke outcomes and performance improvement	
3. An identified Stroke Registrar who: a. Has appropriate training in stroke chart abstraction b. Has appropriate training in stroke registry data entry c. Has the ability to provide stroke registry data to the PI program	D
4. Written protocols, developed with approval by the hospital's medical staff: a. Stroke Team Activation b. Identification of stroke team responsibilities during the stabilization of a stroke patient c. Triage, admission and transfer criteria of stroke patients d. Protocols for the administration of thrombolytics and other approved stroke treatments e. Stabilization and treatment of stroke patients f. Facility capability for stroke patients will be provided to the Regional Advisory Council	E
B. PHYSICIAN SERVICES	
1. Emergency Medicine - this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services a. Any emergency physician who provides care to the stroke patient must be credentialed by the Stroke Medical Director to participate in the stabilization and treatment of stroke patients (i.e. current board certification/eligibility, compliance with stroke protocols and participation in the stroke PI program) b. An average of 8 hours per year of stroke related continuing medical education c. An Emergency Medicine Physician providing stroke coverage must be current in Advanced Cardiac Life Support (ACLS) d. The emergency physician representative to the multidisciplinary committee that provides stroke coverage to the facility shall attend 50% or greater of multidisciplinary and peer review stroke committee meetings	E
2. Radiology - Capability to have computerized topography (CT) report read within 45 minutes of patient arrival	E
3. Primary Care Physician - the patient's primary care physician should be notified at an appropriate time	D
C. NURSING SERVICES (all patient care areas)	
1. All nurses caring for stroke patients throughout the continuum of care have ongoing documented knowledge and skills in stroke nursing for patients of all ages to include: a. Stroke specific orientation b. Annual competencies c. Continuing annual education	E
2. Written standards on nursing care for the stroke patients for all units caring for stroke patients shall be implemented	E
3. 100% of nurses providing initial stabilization care for stroke patients shall be competent in: a. NIHSS (competency or certification) b. Dysphagia screening c. Thrombolytic therapy administration	E

D. EMERGENCY DEPARTMENT	
1. The published physician on-call schedule must be available in the Emergency Department (ED)	**E**
2. A physician with special competence in the care of the stroke patient who is on-call (if not in-house 24/7) shall be promptly available within 30 minutes of request from outside the hospital and on patient arrival from inside the hospital	**E**
3. The physician on duty or on-call to the ED shall be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle or for patients who are exhibiting signs and symptoms of an acute stroke	**E**
4. A minimum of one and preferably two registered nurses who have stroke training shall participate in the initial stabilization of the stroke patient. Nursing staff required for initial stabilization is based on patient acuity and "last known well time" 5. 100% of the nursing staff have successfully completed and hold current credentials and competencies in: a. ACLS (certification) b. NIHSS (competency or certification) c. Dysphagia Screening (competency) d. Thrombolytic therapy administration (competency)	**E**
6. Nursing documentation for stroke patients is systematic and meets stroke registry guidelines	**E**
7. Two-way communication with all pre-hospital emergency medical services	**E**
8. Equipment and services for the evaluation and stabilization of, and to provide life support for, critically ill stroke patients of all ages shall include, but not limited to: a. Airway control and ventilation equipment b. Continuous cardiac monitoring c. Mechanical ventilator d. Pulse oximetry e. Suction devices f. Electrocardiograph-oscilloscope-defibrillator g. Supraglottic airway management device h. All standard intravenous fluids and administration devices i. Drugs and supplies necessary to provide thrombolytic therapy	**E**
E. RADIOLOGICAL CAPABILITY	
1. 24-hour coverage by in-house technician	**D**
2. Computerized tomography	**E**
F. CLINICAL LABORATORY SERVICE	
1. 24-hour coverage by in-house lab technician	**D**
2. Drug and alcohol screening	**D**
3. Call-back process for stroke patients within 30 minutes 4. Bedside glucose 5. Standard analyses of blood, urine and other body fluids, including micro-sampling 6. Blood typing and cross-matching 7. Coagulation studies 8. Blood gases and pH determination	**E**

G. PERFORMANCE IMPROVEMENT (PI)	
1. A facility seeking initial designation must show at least 6 months worth of audits for all qualifying stroke patients with evidence of "loop closure" on identified issues 2. A designated stroke facility must have an ongoing PI program that includes at a minimum: a. All stroke activations b. All stroke admissions c. All transfers out d. All readmissions e. All stroke deaths 3. Performance improvement activities must be: a. continuous and ongoing throughout the designation period b. available for review on a rolling two year period and c. available for review at all times	E
4. An organized Stroke PI program established by the hospital a. Audit charts for appropriateness of stroke care	E
b. Documented evidence of identification of all deviations from standards of stroke care c. Documentation of actions taken to address identified issues d. Documented evidence of participation by the Stroke Medical Director e. Morbidity and mortality review including decisions by the Stroke Medical Director as to whether or not standard of care was met f. Documented resolutions "loop closure" of all identified issues to prevent future reoccurrences g. Special audit for all stroke deaths and other specified cases, including complications h. Multidisciplinary hospital Stroke PI Committee	E
5. Multidisciplinary stroke conferences, continuing education and problem solving to include documented nursing and pre-hospital participation	D
6. Feedback regarding stroke patient transfers-out from the ED and in-patient units shall be obtained from receiving facilities	D
7. Stroke Registry - data shall be accumulated and downloaded to the receiving agencies	E
8. Participation with the regional advisory council's (RAC) PI program, including adherence to regional protocols, review of pre-hospital stroke care, submitting data to the RAC as requested to include such things as summaries of transfer denials and transfers to hospitals outside the RAC	E
9. Times of and reasons for diversion must be documented and reviewed by the Stroke PI program	E
H. REGIONAL STROKE SYSTEM	
1. Must participate in the regional stroke system development per RAC requirements 2. Participates in the development of RAC transport protocols for stroke patients, including destination and facility capability	E

I. TRANSFERS	
1. A process to expedite the transfer of a stroke patient to include such things as written transfer protocols, written/verbal transfer agreements, and a regional stroke transfer plan for patients needing a higher level of care (Comprehensive or Primary Stroke Center)	**E**
2. A system for establishing an appropriate landing zone in close proximity to the hospital (if rotor wing services are available)	**E**
J. PUBLIC EDUCATION/STROKE PREVENTION	
1. A public education program to address: a. Signs and symptoms of a stroke b. Activation of 911 c. Stroke risk factors d. Stroke prevention	**E**
2. Coordination and/or participation in community/RAC stroke prevention activities	**E**
K. TRAINING PROGRAMS	
1. Formal programs in stroke continuing education provided by hospital for staff based on needs identified from the Stroke PI program for: a. Staff physicians b. Nurses c. Allied health personnel, including mid-level providers	**D**

Figure: 31 TAC §65.72(b)(2)(C)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	34	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white.	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag limit of 5 is the possession limit allowed for flounder for those fishing with a recreational license. The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 30 flounder, except on board a licensed commercial shrimp boat. During the month of November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two.			
Gar, alligator*	1	No limit	No limit

*Special Regulation: Between May 1 and May 31 no person shall take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the IH 35 bridge.			
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish.	No limit	84	No limit
Saugeye.	3	18	No limit
Seatrout, spotted.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies other than Atlantic sharpnose, Blacktip, and Bonnethead sharks. .	1	64*	No limit
Atlantic sharpnose, Blacktip, and Bonnethead sharks.	1	24	No limit
*Special Regulation: The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time: Atlantic angel, Basking, Bigeye sand tiger, Bigeye sixgill, Bigeye thresher, Bignose, Caribbean reef, Caribbean sharpnose, Dusky, Galapagos, Longfin mako, Narrowtooth, Night, Sandbar, Sand tiger, Sevengill, Silky, Sixgill, Smalltail, Whale, White.			
Sheepshead.	5	13*	No limit
*Special Regulation: Beginning on September 1, 2008, the size limit will be 14 inches. Beginning on September 1, 2009, the size limit will be 15 inches.			
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	1	85	No limit

Triggerfish, gray	20	16	No limit
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
In all waters in the Lost Maples State Natural Area (Bandera).	0	No limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lake Nacogdoches (Nacogdoches)	5		It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No limit	It is unlawful to retain more than two bass of less than 18 inches in length.
Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No limit	Catch and release only except that any bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing, but may not be removed from the immediate vicinity of the lake. After weighing, the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.

Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan).	5	14 - 18 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), and Monticello (Titus).	5	14 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Lake Fork (Wood, Rains and Hopkins).	5	16 - 24 inch Slot limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.		18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 inch Slot limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted.			
Lake Alan Henry (Garza).	3	18	

Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white.			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No limit	
Carp: common			
Lady Bird Lake (Travis).	No limit	No limit	It is unlawful to retain more than one common carp of 33 inches or longer per day.
Catfish: blue			

Lakes Lewisville (Denton), Richland-Chambers (Freestone and Navarro), and Waco (McLennan)	25 (in any combination with channel catfish)	30-45-inch slot limit	It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	No more than one blue catfish 30 inches or greater in length may be retained each day.
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam.	5 (in any combination)	No limit	
Community fishing lakes.	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead.			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			

Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No limit	Possession limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Information: Feral Hog Damage Abatement Program

Statement of Purpose. The Texas Department of Agriculture (TDA) requests information for a long-term statewide feral hog abatement strategy. TDA has been appropriated $1 million in the State 2010-2011 biennium for feral hog abatement research, landowner education and outreach, and/or cooperative funding projects with local, county, or regional organizations.

Eligibility. Responses will be accepted from all interested parties including, but not limited to, private organizations, public non-profit institutions, organizations of higher education and governmental agencies.

The information should focus on all regions in the state experiencing negative impacts to agricultural enterprises, public safety and the economy due to feral hog populations. Region specific strategies are encouraged and should include strategies that will yield the maximum economic net return to agricultural production, public safety, and the overall state economy for the effort and expense invested.

Response to RFI. Please include the following information:

1. Contact Information. Primary contact person's name, name of organization or affiliated group, phone number, mailing address and email address.

2. Approach. Explain briefly the proposed approach for feral hog abatement. Include benefits of the method, potential objectives and program goals. Additionally, information about possible obstacles or drawbacks should be included.

3. Budget. Provide budget estimates for the proposed project.

4. Additional Comments. Provide any other additional comments regarding a long-term statewide feral hog abatement strategy.

Responses are limited to 2 pages. Text should be no less than 10-point font type size (Times New Roman or Arial) and margins should be set at 1 inch.

The Next Steps. This Request for Information (RFI) is issued solely to assist TDA in its planning processes and for data collection purposes. It does not constitute a Request for Proposals (RFP), or other solicitation document, nor does it represent a definite intention to issue an RFP in the future.

TDA will review all responses that are timely submitted, determine the best plan of action and pursue developing it. As the next step, all persons who are interested in developing the chosen strategy for feral hog abatement in Texas would be requested to submit their proposal for this project. TDA will award up to $1 million for projects that are selected in the RFP process to implement the Texas feral hog abatement strategy.

Deadline for Submission of Responses. Responses to this request should be submitted to Ms. Lindsay Dickens, Grants Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701. Fax: (888) 223-9048, e-mail: Lindsay.Dickens@TexasAgriculture.gov. **Submissions must be received no later than 5:00 p.m. on September 11, 2009.**

Assistance and Questions. Please contact Lindsay Dickens at (512) 463-6695 or by email at Lindsay.Dickens@TexasAgriculture.gov with any questions you may have.

TRD-200903488
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 11, 2009

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Settlement Agreement in *State of Texas v. Abdullah Ahmedi d/b/a Country Boy Store 2*; Cause No. D-1-GV-08-001621 in the 250th Judicial District, Travis County District Court.

Background: This suit alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Texas Water Code related to the use of underground storage tanks. The Defendant is Abdullah Ahmedi. The suit seeks administrative penalties, civil penalties, injunctive relief, attorney's fees, pre-judgment interest, and court costs.

Nature of the Settlement: The settlement awards $40,000.00 in civil penalties, $14,700 in past due administrative penalties, $253.00 in court costs, $551.00 in pre-judgment interest, and $13,800.00 in attorney's fees for the State. The Judgment also requires the Defendant to comply with rules related to the use of underground storage tanks.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mark Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200903486

Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 10, 2009

♦ ♦ ♦

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title: *State of Texas v. The Premcor Refining Group, Inc.*

Nature of Defendant's Operations: Defendant owns and operates a petroleum refinery in Port Arthur, Texas. Defendant's operations discharged air contaminants in excess of permit levels for many different materials.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to pay a cash penalty and fund a supplemental environmental project, totaling $1,900,000. Defendant agrees to pay the State $950,000 in cash penalty, with the remaining $950,000 deferred upon completion of the supplemental environmental project. Defendant will pay the State $100,000 in attorneys fees plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200903491
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 11, 2009

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Amendment

Pursuant to Chapters 403 and 404 Texas Government Code; the Comptroller of Public Accounts (Comptroller) announces under its Request for Proposals (RFP #175h) the amendment of the following contract:

The contract awarded to JPMorgan Chase Bank, N.A., 221 West 6th St., Austin, Texas 78701 (Contractor) has been amended by Amendment No. 1 (Amendment). The total contract amount is dependent on usage of automated clearing house services by state agencies. The Amendment extends the contract until August 31, 2010 by the exercise of the Comptroller's sole option under the current contract to extend the contract term.

The Comptroller's Request for Proposals (RFP #175h) related to this contract was published in the April 7, 2006, issue of the *Texas Register* (31 TexReg. 3077).

The term of the contract, as extended by the Amendment is September 1, 2006 through August 31, 2010 with no further options to extend the term.

TRD-200903386
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 6, 2009

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/17/09 - 08/23/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/17/09 - 08/23/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200903503
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 11, 2009

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 21, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Build-

ing C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 21, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Homer V. Beltran; DOCKET NUMBER: 2009-0648-LII-E; IDENTIFIER: RN103397188; LOCATION: Orange Grove and Alice, Jim Wells County; TYPE OF FACILITY: landscape irrigation company; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a) and §344.30, Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $1,456; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: CUSA KBC, LLC dba Cusa; DOCKET NUMBER: 2009-0936-PST-E; IDENTIFIER: RN100644947; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial bus maintenance and fueling; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide adequate corrosion protection to all underground metal components of an underground storage tank (UST) system; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the UST system; and 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: $6,096; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Defense Energy Support Center and the United States Department of the Army; DOCKET NUMBER: 2008-1265-WQ-E; IDENTIFIER: RN1029800768; LOCATION: Fort Hood, Bell County; TYPE OF FACILITY: base fueling station; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of waste; PENALTY: $2,444; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Edmonson; DOCKET NUMBER: 2009-0495-PWS-E; IDENTIFIER: RN101205375; LOCATION: Edmonson, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(III), (ii)(III), (B)(iii), and (D)(i), by failing to compile, maintain on file at the facility, and make available to the commission upon request, a thorough and up-to-date record of water works operation and maintenance activities; and 30 TAC §290.121(a) and (b), by failing to compile, maintain on file at the facility, and make available to the commission upon request, a thorough and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use; PENALTY: $210; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: EL MODENO GARDENS, INC., P&E Groot Family Trust, and SEVILLE FARMS, INC.; DOCKET NUMBER: 2009-0459-WQ-E; IDENTIFIER: RN103777488; LOCATION: Smith County; TYPE OF FACILITY: nursery; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of sediment; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: GUERRA & REYNA INVESTMENTS, LP; DOCKET NUMBER: 2009-0921-EAQ-E; IDENTIFIER: RN105332563; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: land development construction site; RULE VIOLATED: 30 TAC §213.4(j)(4), by failing to obtain approval of a modification to an Edwards Aquifer Protection Plan prior to initiating construction; PENALTY: $750; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Harris County Municipal Utility District Number 148; DOCKET NUMBER: 2009-0575-MWD-E; IDENTIFIER: RN102180882; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(4), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011818001, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(1), TPDES Permit Number WQ0011818001, Effluent Limitations and Monitoring Requirements Number 1, by failing to maintain compliance with the permit effluent limits for total suspended solids (TSS), ammonia nitrogen (NH_3), carbonaceous biochemical oxygen demand, and chlorine residual; 30 TAC §305.125(1) and TPDES Permit Number WQ0011818001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment are properly operated and maintained; 30 TAC §305.125(5) and TPDES Permit Number WQ0011818001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and §319.5(a) and TPDES Permit Number WQ0011818001, Effluent Limitations and Monitoring Requirements Number 2, by failing to collect total chlorine residual samples at the proper locations; PENALTY: $21,650; Supplemental Environmental Project (SEP) offset amount of $17,320 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Water or Wastewater Treatment; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Hudspeth County; DOCKET NUMBER: 2009-1218-WQ-E; IDENTIFIER: RN105749394; LOCATION: Hudspeth County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: Kopperl Independent School District; DOCKET NUMBER: 2009-0535-MWD-E; IDENTIFIER: RN101279396; LOCATION: Bosque County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013982001, Interim Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permit effluent limits for biochemical oxygen demand, TSS, dissolved oxygen, and chlorine; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Joseph M. Meyers; DOCKET NUMBER: 2009-1217-OSI-E; IDENTIFIER: RN103385639; LOCATION: Huntsville, San Jacinto County; TYPE OF FACILITY: licensing;

RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(11) COMPANY: Rainbow Painting, L.L.C.; DOCKET NUMBER: 2009-0353-AIR-E; IDENTIFIER: RN104858535; LOCATION: Vidor, Orange County; TYPE OF FACILITY: sandblasting and painting; RULE VIOLATED: 30 TAC §106.8(c)(2)(B) and Texas Health and Safety Code, §382.085(b), by failing to maintain records sufficient to demonstrate compliance with all applicable permit by rule conditions; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Gilbert O. Reyes, Jr. dba Party Time II; DOCKET NUMBER: 2009-1205-PST-E; IDENTIFIER: RN104759568; LOCATION: El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 401 E. Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Richter-Land, LLC; DOCKET NUMBER: 2009-0303-MLM-E; IDENTIFIER: RN105645634; LOCATION: Comal County; TYPE OF FACILITY: commercial development site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Balbir Singh; DOCKET NUMBER: 2009-0708-LII-E; IDENTIFIER: RN105235964; LOCATION: near Murphy, Dallas County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; and 30 TAC §344.30 and §344.34(b), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to refrain from using or attempting to use the license number of a licensed irrigator; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Skidmore Water Supply Corporation; DOCKET NUMBER: 2009-0694-MWD-E; IDENTIFIER: RN102342201; LOCATION: Bee County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014112001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for NH_3; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014112001, Sludge Provisions, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $3,090; SEP offset amount of $2,472 applied to Keep Texas Beautiful - Texas Waterways Cleanup Program; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200903495
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 11, 2009

♦ ♦ ♦

Notice of District Petition

Notice issued August 4, 2009.

TCEQ Internal Control No. 05142009-D01; Polk County Fresh Water Supply District No. 2 has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee of $24 per equivalent single family connection for a period of three (3) years, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200903530
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 12, 2009

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 21, 2009.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 21, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: CITGO Refining and Chemicals Company, L.P.; DOCKET NUMBER: 2008-0837-AIR-E; TCEQ ID NUMBER: RN102555166; LOCATION: 1801 Nueces Bay Boulevard, Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.4 and §116.115(b)(2)(F), Texas Health and Safety Code (THSC), §382.085(a) and (b), and Air New Source Review Permit Number 2695A, General Condition Number 8, by failing to prevent the release of air contaminants in such concentration and such duration as to interfere with the normal use and enjoyment of property; PENALTY: $10,000; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2009-0153-AIR-E; TCEQ ID NUMBER: RN102450756; LOCATION: 1795 Burt Street, Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(a)(2)(F), (G), (b)(7), and (9), and THSC, §382.085(b), by failing to properly report on a September 28, 2003, shut down requiring two reports and seven other reports on emissions events beginning on September 4 - December 22, 2003 as documented during investigations conducted on August 16 and November 30, 2004; 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event in the Catalyst HydroDesulfurization - 1 Flare that began on September 23, 2003 and lasted 2 hours 23 minutes, releasing 1,113.40 pounds (lbs) of hydrogen sulfide (H_2S) as documented during an investigation conducted on August 16, 2004; 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event in the Gas Plant 5 East Unit Debutanizer Tower that began on October 8, 2003 and lasted 2 hours 51 minutes, releasing 162,511.4 lbs of butane, 165,029.5 lbs of n-isobutene, and 89.62 lbs of nitrogen oxide (NO_x) as documented during an investigation conducted on August 16, 2004; 30 TAC §101.201(a)(1)(B) and (c) and THSC, §382.085(b), by failing to properly report within 24 hours of an emissions event at the Fluid Cracking Catalytic Unit discovered on November 11, 2003 at 19:10 hours, but not reported to the TCEQ until November 14, 2003 at 21:01 hours, an emissions event at the Flare Gas Recovery (FGR) Unit discovered on February 11, 2004 at 09:10 hours, but not reported until February 12, 2004 at 14:24 hours, and failing to submit a copy of the final report to the TCEQ no later than within two weeks after the end of the emissions event at the FCC Unit which ended on November 11, 2003 at 23:04 hours, but was not finally reported until November 26, 2003 at 13:27, as documented during an investigation conducted on November 30, 2004; 30 TAC §101.20(3) and §116.116(a)(1), TCEQ Air Permit Number 18425 (application representation), and THSC, §382.085(b), by failing to prevent unauthorized emissions from the FGR Unit that began on February 11, 2004 at 09:10 hours and lasted until 16:40 hours (7 hours and 30 minutes) releasing 28.18 lbs of H_2S as documented during an investigation conducted on November 30, 2004; 30 TAC §112.3(c) and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event at the Sulfur Plant 3 that began on March 9, 2004 and lasted 1 hour and 23 minutes, releasing 50.00 lbs of carbon monoxide (CO), 516.47 lbs of H_2S, 6.95 lbs of NO_x, 49,374.20 lbs of sulfur dioxide (SO_2), and 19.98 lbs of volatile organic compound (VOC); 30 TAC §§101.20(3), 116.115(c), 122.143(4), THSC, §382.085(b), Permit Number 46534/PSD-TX-992, Special Condition Number 1 and Permit Number O-02044, Special Terms and Conditions Number 11, by failing to prevent unauthorized emissions; PENALTY: $38,494; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: KBL Management, Inc.; DOCKET NUMBER: 2009-0126-PWS-E; TCEQ ID NUMBER: RN102320991; LOCATION: 2701 Prairie Creek Road, Marble Falls, Burnet County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine coliform samples for the months of October, November, and December 2007, and January - December 2008, and by failing to provide public notice of the failure to collect those samples; PENALTY: $7,018; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Mike Wiley; DOCKET NUMBER: 2008-0155-PST-E; TCEQ ID NUMBER: RN105381370; LOCATION: 1211 North Margaret Street, Kirbyville, Jasper County; TYPE OF FACILITY: formerly used as a gasoline service station; RULES VIOLATED: 30 TAC §334.7(a)(1), by failing to register with the commission an underground storage tank (UST) in existence on or after September 1, 1987; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.48(a), by failing to prevent an unauthorized discharge of gasoline; PENALTY: $11,000; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Nguyen and Quang Huynh, aka Quinn Huynh, dba Discount Grocery Store; DOCKET NUMBER: 2008-0527-PST-E; TCEQ ID NUMBER: RN102226750; LOCATION: 4244 Wilbarger, Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC

§115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system for the petroleum storage tanks; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system by completing a training course approved by the executive director and by failing to ensure that current employees are aware of the purposes and correct operating procedures of the Stage II system; 30 TAC §115.242(1)(C), (3)(A), and (E) and THSC, §382.085(b), by failing to ensure that the Stage II vapor recovery system is onboard refueling vapor recovery compatible, by failing to replace missing vapor guards on pump nozzles number 1 Regular Unleaded, number 3 Plus and Super Unleaded, and number 4 Super Unleaded, by failing to replace missing vapor guards on pump nozzles number 2 Plus and Super Unleaded, thereby failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding underground storage tank fees and associated late fees for TCEQ Financial Assurance Account Number 0056738U for Fiscal Years 2006 - 2007; 30 TAC §334.7(d)(3) and §334.8(c)(4)(A)(vii) and (B)(ii), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, and by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: $15,783; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Raymond Windham dba Deer Run Water System; DOCKET NUMBER: 2009-0039-PWS-E; TCEQ ID NUMBER: RN101439867; LOCATION: 100 County Road 198, two and 1/2 miles southeast of Bangs, Brown County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.45(f)(1) and (5), by failing to provide a purchase water contract in order to properly evaluate the facility's production, storage, service pump or pressure maintenance capacity; 30 TAC §290.46(f), by failing to develop and maintain records of water works operation and maintenance activities for operator reference and commission review during investigations; 30 TAC §290.42(1), by failing to develop and maintain a complete and up-to-date operations manual for operator review and reference; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfection residuals at representative locations in the distribution system at least once every seven days; PENALTY: $2,030; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: Windwood Water System, Inc.; DOCKET NUMBER: 2008-0968-PWS-E; TCEQ ID NUMBER: RN101456168; LOCATION: 13526 Creekway Drive, Cypress, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Default Order Number 2005-1069-PWS-E, Ordering Provision Number 2, by failing to mail or directly deliver one copy of the Customer Consumer Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; PENALTY: $637; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200903498
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 11, 2009

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 21, 2009.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas

78711-3087 and must be **received by 5:00 p.m. on September 21, 2009.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Andre C. Cormier; DOCKET NUMBER: 2009-0270-LII-E; TCEQ ID NUMBER: RN103507133; LOCATION: 5305 Murrieta Way, Keller, Tarrant County; TYPE OF FACILITY: installed an irrigation system; RULES VIOLATED: 30 TAC §334.70, by failing to comply with local requirements, ordinances, and regulations designed to protect the public water supply by installing an irrigation system at the site without obtaining a permit and backflow prevention device inspection as required by the City of Keller, Texas; PENALTY: $341; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: David Parker; DOCKET NUMBER: 2008-1868-MLM-E; TCEQ ID NUMBER: RN105610273; LOCATION: 3549 North United States Highway 59, Jefferson, Marion County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) transfer facility; RULES VIOLATED: 30 TAC §111.201 and §330.15(a)(1) and TWC, §26.121(a), by failing to comply with the general prohibition on outdoor burning, by failing to prevent the unauthorized disposal of MSW, and by failing to prevent the discharge of MSW into or adjacent to any water in the state; 30 TAC §330.9(a), by failing to register as a MSW transfer station; 30 TAC §330.103(b) and (c), by failing, as a transporter of MSW, to ensure that all MSW collected is unloaded only at authorized facilities, and by failing to maintain records that all wastes were taken to an authorized MSW facility; and 30 TAC §330.107(b) and §330.105(a), by failing, as a transporter of MSW, to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and by failing to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection; PENALTY: $10,941; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Mattie Novosad; DOCKET NUMBER: 2008-1068-PST-E; TCEQ ID NUMBER: RN101662013; LOCATION: 203 West Mesquite Avenue, Rogers, Bell County; TYPE OF FACILITY: two underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $7,875; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Ryan Bullard; DOCKET NUMBER: 2009-0842-MLM-E; TCEQ ID NUMBER: RN105610273; LOCATION: 3549 North US Highway 59, Jefferson, Marion County; TYPE OF FACILITY: unauthorized MSW transfer facility; RULES VIOLATED: 30 TAC §111.201 and §330.15(a)(1) and TWC, §26.121(a), by failing to comply with the general prohibition on outdoor burning, by failing to prevent the unauthorized disposal of MSW, and by failing to prevent the discharge of MSW into or adjacent to any water in the state; 30 TAC §330.9(a), by failing to register as a MSW transfer station; 30 TAC §330.103(b) and (c), by failing as a transporter of MSW, to ensure that all MSW collected is unloaded only at authorized facilities and by failing to maintain records that all wastes were taken to an authorized MSW facility; and 30 TAC §330.107(b) and §330.105(a), by failing, as a transporter of MSW, to prevent the discharge of solid waste from the vehicle on the way to an authorized disposal facility and by failing to properly maintain MSW collection vehicles to prevent the loss of solid wastes during collection; PENALTY: $10,941; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: Salzgitter Mannesmann Stainless Tubes USA, Inc.; DOCKET NUMBER: 2008-1774-AIR-E; TCEQ ID NUMBER: RN100210962; LOCATION: 12050 West Little York Road, Houston, Harris County; TYPE OF FACILITY: steel pipe and tube manufacturing plant; RULES VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code, §382.085(b), by failing to submit Annual Emissions Inventory Updates for calendar years 2006 and 2007; PENALTY: $7,350; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200903497
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 11, 2009

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued on July 21, 2009 through July 30, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ALCOA INC. which operates the Rockdale Plant, a complex for the primary production of aluminum, electric power generation, and lignite mining, has applied for a major amendment to TPDES Permit No. WQ0000395000 to increase the maximum effluent limitation for pH at Outfalls 001/001a from 9.0 SU to 10.0 SU; remove Outfalls 106, 010, and 110; and authorize the use of Alcoa Lake Treatment System water (water from the cooling pond) for dust suppression in the power plant, atomizer, smelter, and mining areas. The current permit authorizes the discharge of previously monitored effluent (including domestic wastewater, recirculated cooling water, process wastewater from the aluminum smelting operation, power plant low volume waste sources, utility wastewater, air conditioning condensate, bottom ash transport water, metal cleaning wastes, storm water runoff, and storm water and utility wastewater from the smelter) from the cooling pond (Alcoa Lake) at a total volume not to exceed 326,000,000 gallons per month via Outfalls 001 and 001a; plant area storm water runoff on an intermittent and flow variable basis via Outfall 002; wastewater from the active mining area on an intermittent and flow variable basis via Outfalls 003, 004, 005, 006, 007, 009, and 010; and wastewater from the post-mining area on an intermittent and flow variable basis via Outfalls 103, 104, 105, 106, 107, 109, and 110. The facility is located between Farm-to-Market Roads 1786 and 2116, approximately 7.5 miles southwest of the City of Rockdale, Milam County, Texas 76567.

LUMINANT GENERATION COMPANY LLC which operates Graham Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0000551000, which authorizes the discharge of once-through cooling water via Outfall 001; low volume waste sources, storm water runoff, and previously monitored effluent (consisting of metal cleaning waste via internal Outfall 102) via Outfall 002. The facility is located on the shores of Lakes Eddleman and Graham adjacent to U.S. Highway 380, approximately 2.5 miles northwest of the City of Graham, Young County, Texas 75201.

OXY VINYLS which operates La Porte VCM Site, a Vinyl Chloride monomer manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002097000 with minor modifications involving clarification of definition of "utility wastewaters" and the "discharge route for Outfall 003." The existing permit authorizes the discharge of treated wastewater consisting of process, domestic, and utility wastewaters and storm water at a daily average flow not exceeding 1,570,000 million gallons per day via Outfall 001; storm water, steam condensate, air conditioning condensate, and wash down water (and occasional discharges of wastewater diverted from Outfall 001) on an intermittent and flow variable basis via Outfall 002; and storm water, steam condensate, air conditioning condensate, and wash down water on an intermittent and flow variable basis via Outfall 003. The facility is located at 2400 Miller Cut Off Road, approximately 3,000 feet east of the intersection of Miller Cut Off Road and State Highway 134 (Battleground Road), in the City of La Porte, Harris County, Texas.

CITY OF AUSTIN which operates Sandhill Energy Center, a gas-fired/combined cycle electric generating station, has applied for a renewal of TPDES Permit No. WQ0004351000, which authorizes the discharge of cooling tower blowdown and previously monitored effluents (PMEs) (cooling water drained from condensers and other cooling equipment during maintenance periods, metal cleaning wastes, and low volume wastes) at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001. The facility is located at 13005 Fallwell Lane, approximately two miles east of the intersection of State Highway 71 and Fallwell Lane, Travis County, Texas 78617.

CITY OF BAY CITY has applied for a renewal of TPDES Permit No. WQ0010123004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,300,000 gallons per day. The facility is located approximately 4,000 feet east of State Highway 60 on the west side of Cottonwood Creek and approximately 9,200 feet south of State Highway 35, Bay City in Matagorda County, Texas.

CITY OF BLANCO has applied for a renewal of TPDES Permit No. WQ0010549002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 68 acres of agricultural land. The facility is located approximately 0.8 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1623 in Blanco County, Texas 78606.

HORIZON REGIONAL MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0010795001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 1,500,000 gallons per day to an annual average flow not to exceed 3,000,000 gallons per day and addition of Outfall 003. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; the disposal of treated wastewater at a volume not to exceed a daily average flow of 1,000,000 gallons per day by irrigation of 320 acres of pastureland via Outfall 002 with provisions for additional irrigation of 145 acres of a golf course. No discharge of pollutants into water of the State is authorized from Outfall 002. The facility is located approximately 0.5 mile west of the intersection of Asford Road and Horizon Boulevard and approximately 2 miles northeast of the intersection of Interstate Highway 10 (U.S. Highway 10) and Farm-to-Market Road 1281 (Horizon Boulevard) in El Paso County, Texas.

CITY OF FREEPORT has applied for a renewal of TPDES Permit No. WQ0010882002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 67.68 acres of golf course land. The facility is located at 123 Slaughter Road, north of State Highway 36, approximately 1 mile south of the Brazos River in Brazoria County, Texas 77541.

HILL COUNTRY HARBOR, L.P. has applied for a renewal of TPDES Permit No. WQ0014173001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 3,500 feet west of the intersection of Farm-to-Market Road 2951 and Park Road 36 in Palo Pinto County, Texas 76449.

SOBRANTE MANAGEMENT, INC. has applied for a renewal of TCEQ Permit No. WQ0014481001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,600 gallons per day via subsurface drip irrigation with a minimum area of 2.2 acres of public access landscape. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3,000 feet north of the intersection of Morgans Point Road and Sobrante, at the end of Sobrante in the curve adjacent to Lake Belton in Bell County, Texas 76513.

AUC GROUP, L.P. has applied for a renewal of TPDES Permit No. WQ0014566001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,300 gallons per day. The facility will be located 160 feet south of the intersection of Little River and State Highway 36 in Milam County, Texas 76502.

MSEC ENTERPRISES, INC. has applied for a renewal of TPDES Permit No. WQ0014638001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 16550 Farm-to-Market Road 2854, approximately 11,000 feet west of the intersection of Farm-to-Market Road 2854 and McCaleb Road on the north side of Farm-to-Market Road 2854 in Montgomery County, Texas 77356.

The following do not require publication in a newspaper. Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE THE NOTICE IS ISSUED.

CITY OF MCALLEN has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010633004 to change the method of disinfection from chlorination to an Ultraviolet Light (UV) system. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The facility is located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107 in Hidalgo County, Texas 78503.

If you need more information about these permit applications or the permitting process; please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903525

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 12, 2009

♦ ♦ ♦

Department of Family and Protective Services

Notice of Public Meeting - Evaluation of Minimum Standards for Child Day Care and 24-Hour Residential Child Care

The Texas Department of Family and Protective Services' (DFPS') Committee on Licensing Standards will conduct a public meeting on September 9, 2009, regarding the current evaluation of minimum standards for both child day care and 24-hour residential child care. At this public meeting, you will have an opportunity to give input into the evaluation of the minimum standards. The meeting will take place at the John H. Winters Building, Public Hearing Room 125E, 701 W. 51st Street, Austin, Texas.

The committee will hear input on the **child day care minimum standards** from **noon to 2:00 p.m.** This includes child care centers and all home-based day care. The committee will hear input on the **24-hour residential child care minimum standards** from **3:00 to 5:00 p.m.** This includes foster care, adoption, and facilities where children live.

Persons with disabilities planning to attend the meeting who may need auxiliary aids or services should contact Amy Chandler (512) 438-3134, by September 3, 2009, so appropriate arrangements can be made.

If you are unable to attend this meeting, regional meetings will also be held in the fall. Details regarding the regional meetings will be posted on our web site at www.dfps.state.tx.us/child_care soon. Thank you in advance for your interest and participation in this important process.

TRD-200903478
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: August 10, 2009

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425-00040 RFQ 26 to **Bailit Health Purchasing, Inc.**, an entity with a principal place of business at 56 Pickering Street, Needham, MA 02492. The contractor will provide the procurement, implementation, and evaluation of the health home pilot project for children on Medicaid.

The total value of the contract with **Bailit Health Purchasing, Inc.** is $227,599.00. The contract was executed on August 5, 2009, and will expire on December 22, 2011, unless extended or terminated sooner by the parties. **Bailit Health Purchasing, Inc.** will produce numerous documents and reports during the term of the contract, with the final reporting due by December 22, 2011.

TRD-200903366
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: August 6, 2009

♦ ♦ ♦

Notice of Proposed Reimbursement Rate for Non-state Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Proposed Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) proposes the following per diem reimbursement rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The public hearing notice was published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4768).

Payment rates are proposed to be effective September 1, 2009, as follows:

Per Diem Rates for Non-State Operated ICF/MR Services by Level of Need and Facility Size

Level of Need	8 or Less Beds	9-13 Beds	14+ Beds
1 Intermittent	$148.84	$121.78	$115.87
5 Limited	$165.85	$138.30	$124.28
8 Extensive	$188.63	$163.96	$140.10
6 Pervasive	$230.98	$196.28	$180.19
9 Pervasive +	$419.01	$394.31	$398.33

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter D, §355.456, Rate Setting Methodology. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2010-11 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009), which appropriated $4.5 million general revenue funds for the State Fiscal Year 2008 - 2009 biennium for Medicaid rate increases for the DADS' ICF/MR program.

TRD-200903524
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 12, 2009

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 1, 2009, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for Physician-Administered Drugs. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Physician-Administered Drugs are proposed to be effective September 1, 2009.

Methodology and Justification. The proposed payment rate was calculated in accordance with 1 TAC §355.8085, which address the reimbursement methodology for physicians and certain other practitioners.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after August 17, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Rate Analysis, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to meisha.scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200903542
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 12, 2009

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2009.

The amendment updates and clarifies the reimbursement methodology for inpatient hospital services. The amendment will modify the new hospital and hospital merger rates section of the State Plan.

The proposed amendment is estimated to result in an annual aggregate savings of $660,540 for the remainder of federal fiscal year (FFY) 2009, with approximately $454,187 in federal funds and $206,353 in state funds. For FFY 2010, the estimated additional aggregate savings is $7,926,475, with approximately $5,410,612 in federal funds and $2,515,863 in state funds. For FFY 2011, the estimated additional aggregate savings is $7,926,475, with approximately $4,828,016 in federal funds and $3,098,459 in state funds.

Interested parties may obtain copies of the proposed amendment by contacting Chris Dockal, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1467; by facsimile at (512) 491-1998; or by e-mail at chris.dockal@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200903494
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 11, 2009

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2009.

The amendment will modify the reimbursement methodology in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following service: Physicians and Certain Other Practitioners

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $42,561 for the remainder of federal fiscal year (FFY) 2009, with approximately $29,265 in federal funds and $13,296 in State General Revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is $467,810, with approximately $319,327 in federal funds and $148,483 in GR. For FFY 2011, the estimated additional aggregate expenditure is $528,306, with approximately $321,792 in federal funds and $206,514 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200903532
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 12, 2009

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Northwest Surgery Center	L06236	Austin	00	07/22/09
Kyle	Seton Healthcare dba Seton Medical Center Hays	L06254	Kyle	00	07/20/09
Stafford	Aloki Enterprise Inc.	L06257	Stafford	00	07/10/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	108	07/27/09
Beaumont	Advanced Cardiovascular Specialists L.L.P.	L05512	Beaumont	15	07/21/09
Bedford	Texas Health Harris Methodist Hospital Hurst Euless Bedford	L02303	Bedford	35	07/17/09
Burleson	Rajanarender R. Cholleti, M.D., P.A.	L06175	Burleson	02	07/24/09
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	02	07/23/09
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	89	07/27/09
Cypress	Houston Interventional Cardiology P.A.	L05470	Cypress	07	07/16/09
Dallas	Dallas Cardiology Associates P.A.	L04607	Dallas	55	07/14/09
Denton	Columbia Medical Center of Denton Subsidiary L.P. dba Denton Regional Medical Center	L02764	Denton	65	07/12/09
Fort Worth	Fort Worth Heart P.A.	L05480	Fort Worth	29	07/23/09
Galveston	The University of Texas Medical Branch	L01299	Galveston	82	07/24/09
Garland	Baylor Medical Center at Garland	L01565	Garland	48	07/15/09
Glen Rose	Glen Rose Medical Foundation Inc.	L02764	Glen Rose	25	07/15/09
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	74	07/24/09
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	26	07/21/09
Houston	University of Texas M.D. Anderson Cancer Center	L00466	Houston	118	07/27/09
Houston	Cypress Cardiology P.A.	L04353	Houston	22	07/21/09
Houston	Northwest Houston Cardiology P.A.	L05823	Houston	08	07/24/09
Houston	CCNWHI L.P. dba Cy Fair Cancer Center	L06050	Houston	03	07/22/09
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	07	07/23/09
Houston	CHCA West Houston L.P. dba West Houston Medical Center	L06055	Houston	08	07/27/09
Houston	University of Texas M.D. Anderson Cancer Center	L06227	Houston	02	07/21/09
Lubbock	Covenant Medical Center	L00483	Lubbock	140	07/24/09
Lubbock	Covenant Health System dba Covenant Medical Center-Lakeside	L01547	Lubbock	91	07/24/09
Lubbock	University Medical Center	L04719	Lubbock	107	07/17/09
Lubbock	University Medical Center	L04719	Lubbock	108	07/21/09
Lubbock	University Medical Center	L04719	Lubbock	109	07/24/09
Lubbock	M. Fawwaz Shoukfeh, M.D., P.A.	L05276	Lubbock	14	07/22/09
Lubbock	Bayer Corp Science	L05811	Lubbock	04	07/17/09
Lubbock	Bayer Corp Science	L05811	Lubbock	05	07/23/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	Lubbock Heritage Hospital L.L.C. dba Grace Medical Center	L06040	Lubbock	05	07/16/09
McKinney	Cardiac Center of Texas P.A.	L05744	McKinney	11	07/24/09
Richardson	Medical Edge Healthcare Group P.A.	L05688	Richardson	10	07/15/09
San Antonio	Methodist Healthcare System of San Antonio L.T.D., L.L.P.	L00594	San Antonio	259	07/21/09
San Antonio	Methodist Healthcare System of San Antonio L.T.D., L.L.P.	L00594	San Antonio	260	07/22/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	104	0/721/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	105	07/24/09
Sherman	Texas Oncology P.A.	L05019	Texarkana	20	07/17/09
Sugar Land	Methodist Sugarland Hospital	L05788	Sugarland	18	07/24/09
Sugar Land	St. Lukes Sugarland Partnership L.L.P.	L06180	Sugarland	05	07/13/09
Sunray	Diamond Shamrock Refining Company L.P.	L04398	Sunray	18	07/17/09
Texarkana	Christus Health ARK-LA-TEX	L04805	Texarkana	21	07/24/09
Throughout Tx	Desert Industrial X-Ray L.P.	L04590	Abilene	98	07/17/09
Throughout Tx	Weatherford International Inc.	L04268	Benbrook	82	07/30/09
Throughout Tx	Frac Tech Services Ltd.	L06188	Cisco	02	07/15/09
Throughout Tx	Numed Inc.	L02129	Denton	61	07/24/09
Throughout Tx	Licon Engineering Company Inc.	L05530	El Paso	08	07/30/09
Throughout Tx	Earthco L.L.C.	L06213	Harlingen	02	07/21/09
Throughout Tx	General Inspection Services Inc.	L02319	Hempstead	45	07/30/09
Throughout Tx	W. W. Webber L.L.C.	L04904	Hillsboro	14	07/16/09
Throughout Tx	HVJ Associates Inc.	L03813	Houston	39	07/17/09
Throughout Tx	Mandes Inspection & Testing	L05220	Houston	65	07/16/09
Throughout Tx	QC Laboratories Inc.	L05956	Houston	08	07/17/09
Throughout Tx	Big State X-Ray	L02693	Odessa	77	07/28/09
Throughout Tx	Black Warrior Wireline Corporation	L04473	Odessa	31	07/16/09
Throughout Tx	T. C. Inspection Inc.	L05833	Oyster Creek	37	07/29/09
Throughout Tx	Techcorr USA L.L.C.	L05972	Palestine	65	07/28/09
Throughout Tx	GCT Inspections Inc.	L02378	South Houston	105	07/2809
Tyler	Trinity Mother Frances Health System	L01670	Tyler	146	07/22/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Irving	Cor Specialty Associates of North Texas P.A.	L05373	Irving	14	07/17/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Genexpress Informatics Inc.	L05826	Austin	04	07/21/09
Carrollton	Patients Comprehensive Diagnostic and Radiation Therapy Center Inc.	L05661	Carrollton	05	07/21/09
La Porte	Sunoco Inc. R&M dba Sunoco Chemicals	L02153	La Porte	38	07/16/09
Throughout Tx	Sunmount Chemicals	L03799	Roanoke	16	07/22/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200903367
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 6, 2009

♦ ♦ ♦

Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council solicits proposals from qualified organizations to provide quality child care initiatives and activities. A proposal package will be available for download at www.h-gac.com or www.wrksolutions.com beginning at 12:00 noon Central Standard Time on Monday, August 10, 2009. Hard copies of the proposal package will also be available at that time. A bidder's conference is scheduled for Monday, August 17, 2009 starting at 2:00 p.m. at the Houston-Galveston Area Council offices, 3555 Timmons Lane, 2nd floor, Conference Room A, Houston, Texas.

Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Friday, August 28, 2009. Mailed proposals must be postmarked no later than Tuesday, August 25, 2009. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or carol.kimmick@h-gac.com or visit the web site to request a proposal package.

TRD-200903407
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: August 6, 2009

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to change the name of AIG CASUALTY COMPANY to CHARTIS PROPERTY CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Harrisburg, Pennsylvania.

Application for admission to the State of Texas by FIRST MORTGAGE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Greensboro, North Carolina.

Application to change the name of MEDICO LIFE INSURANCE COMPANY to ABILITY INSURANCE COMPANY, a foreign life company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200903527
Gene C. Jarmon
General Counsel and Chief Counsel
Texas Department of Insurance
Filed: August 12, 2009

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1209 "Super Deuces"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1209 is "SUPER DEUCES". The play style is "other".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1209 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1209.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, 2 CARD SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $20,000. The possible red play symbols are: 3 CARD SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL and 2 CARD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1209 - 1.2D

PLAY SYMBOL	CAPTION
3 CARD SYMBOL (BLACK)	THR
4 CARD SYMBOL (BLACK)	FOR
5 CARD SYMBOL (BLACK)	FIV
6 CARD SYMBOL (BLACK)	SIX
7 CARD SYMBOL (BLACK)	SVN
8 CARD SYMBOL (BLACK)	EGT
9 CARD SYMBOL (BLACK)	NIN
10 CARD SYMBOL (BLACK)	TEN
J CARD SYMBOL (BLACK)	JCK
Q CARD SYMBOL (BLACK)	QUN
K CARD SYMBOL (BLACK)	KNG
A CARD SYMBOL (BLACK)	ACE
2 CARD SYMBOL (BLACK)	WIN
3 CARD SYMBOL (RED)	THR
4 CARD SYMBOL (RED)	FOR
5 CARD SYMBOL (RED)	FIV
6 CARD SYMBOL (RED)	SIX
7 CARD SYMBOL (RED)	SVN
8 CARD SYMBOL (RED)	EGT
9 CARD SYMBOL (RED)	NIN
10 CARD SYMBOL (RED)	TEN
J CARD SYMBOL (RED)	JCK
Q CARD SYMBOL (RED)	QUN
K CARD SYMBOL (RED)	KNG
A CARD SYMBOL (RED)	ACE
2 CARD SYMBOL (RED)	DBL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $2,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1209), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1209-0000001-001.

K. Pack - A pack of "SUPER DEUCES" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER DEUCES" Instant Game No. 1209 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER DEUCES" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. If the player reveals a BLACK "2"card symbol, the player wins the PRIZE shown for that symbol. If the player reveals a RED "2" card symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "RED DEUCE" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "BLACK DEUCE" (win) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

D. No more than two (2) matching non-winning prize symbols will appear on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. The top prize symbol will appear on every ticket unless otherwise restricted.

G. No duplicate non-winning play symbols, regardless of color, on a ticket.

H. The prize symbols will only appear in black imaging.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER DEUCES" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer

shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER DEUCES" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER DEUCES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUPER DEUCES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SUPER DEUCES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1209. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1209 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	643,200	12.50
$4	739,680	10.87
$5	96,480	83.33
$10	112,560	71.43
$20	48,240	166.67
$50	41,875	192.00
$200	6,499	1,237.11
$2,000	40	201,000.00
$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1209 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1209, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903423
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2009

♦ ♦ ♦

Instant Game Number 1215 "$50,000 Payout"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1215 is "$50,000 PAYOUT". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1215 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1215.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $50,000, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL, 6 DICE SYMBOL, APPLE SYMBOL, BANANA SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, CHERRY SYMBOL, CLOVER SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, LEMON SYMBOL, MELON SYMBOL, ORANGE SYMBOL, HORSESHOE SYMBOL, STAR SYMBOL, SEVEN SYMBOL, WISHBONE SYMBOL and DOLLAR BILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1215 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
APPLE SYMBOL	APL
BANANA SYMBOL	BAN
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BEL
CHERRY SYMBOL	CHY
CLOVER SYMBOL	CLO
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
LEMON SYMBOL	LEM
MELON SYMBOL	MEL

ORANGE SYMBOL	ORG
HORSESHOE SYMBOL	SHO
STAR SYMBOL	STA
7 SYMBOL	SVN
WISHBONE SYMBOL	WBN

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1215), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1215-0000001-001.

K. Pack - A pack of "$50,000 PAYOUT" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 PAYOUT" Instant Game No. 1215 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 PAYOUT" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. For Game 1, if a player matches YOUR NUMBER to any of the ROULETTE WHEEL NUMBERS, the player wins the PRIZE shown for that number. For game 2, the player adds the dice in each ROLL. If the total of the ROLL equals 7 or 11, the player wins the PRIZE shown for that roll. For game 3, if the player reveals 3 matching symbols within a SPIN, the player wins the PRIZE shown for that spin. For game 4, if the player matches any of YOUR NUMBERS to either of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a "dollar bill" symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 46 (forty six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

C. GAME 1: No matching non-winning prize symbols in this game.

D. GAME 1: No matching non-winning ROULETTE NUMBER play symbols on a ticket.

E. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

F. GAME 1: No prize amount in a non-winning spot will correspond with the ROULETTE NUMBER play symbol (i.e. 5 and $5).

G. GAME 2: No matching non-winning prize symbols in this game.

H. GAME 2: No matching non-winning ROLLS in any order.

I. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

J. GAME 2: No ROLL will contain two 1 play symbols creating "snake eyes".

K. GAME 3: No matching non-winning prize symbols in this game.

L. GAME 3: No matching non-winning SPINS in any order.

M. GAME 3: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

N. GAME 3: There will be many near wins, defined as two matching play symbols within a SPIN.

O. GAME 4: No matching WINNING NUMBER play symbols on a ticket.

P. GAME 4: No matching non-winning YOUR NUMBER play symbols on a ticket.

Q. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

R. GAME 4: No prize amount in a non-winning spot will correspond with the WINNING NUMBER play symbol (i.e. 5 and $5).

S. GAME 4: The "DOLLAR BILL" (doubler) play symbol will only appear as dictated by the prize structure.

T. GAME 4: No matching non-winning prize symbols within this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 PAYOUT" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 PAYOUT" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 PAYOUT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 PAYOUT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 PAYOUT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1215. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1215 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	660,800	10.71
$10	708,000	10.00
$15	236,000	30.00
$20	141,600	50.00
$50	88,500	80.00
$100	14,986	472.44
$500	1,416	5,000.00
$1,000	236	30,000.00
$5,000	20	354,000.00
$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1215 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1215, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903528
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 12, 2009

♦ ♦ ♦

Instant Game Number 1216 "Pot O' Gold Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1216 is "POT O' GOLD TRIPLER". The play style is "match 3 of 9 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1216 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1216.

Figure 1: GAME NO. 1216 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$100	ONE HUND
$1,000	ONE THOU
SHAMROCK SYMBOL	SHAMROCK

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $6.00, $9.00, $10.00 $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $100 and $300.

H. High-Tier Prize - A prize of $1,000 or $3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1216), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1216-0000001-001.

K. Pack - A pack of "POT O' GOLD TRIPLER" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "POT O' GOLD TRIPLER" Instant Game No. 1216 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "POT O' GOLD TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 matching prize amounts play symbols, the player wins that amount. If a player reveals 2 matching prize amounts play symbols and a "shamrock" play symbol, the player wins TRIPLE that amount instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than two pairs of matching play symbols on a ticket.

C. No more than three matching play symbols on a ticket.

D. A ticket may only win once.

E. No more than one pair of matching play symbols on a ticket that contains the "SHAMROCK" (tripler) play symbol.

F. The "SHAMROCK" (tripler) play symbol will only appear as dictated by the prize structure.

G. No more than two matching play symbols on a ticket that contains the "SHAMROCK" (tripler) play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "POT O' GOLD TRIPLER" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $6.00, $9.00, $10.00, $15.00, $20.00, $30.00, $60.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $60.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POT O' GOLD TRIPLER" Instant Game prize of $1,000 or $3,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POT O' GOLD TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "POT O' GOLD TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "POT O' GOLD TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1216. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1216 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	707,200	11.54
$2	761,600	10.71
$3	176,800	46.15
$5	54,400	150.00
$6	40,800	200.00
$9	27,200	300.00
$10	27,200	300.00
$15	27,200	300.00
$20	13,600	600.00
$30	3,162	2,580.65
$60	1,700	4,800.00
$100	510	16,000.00
$300	212	38,490.57
$1,000	50	163,200.00
$3,000	20	408,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1216 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1216, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903424
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2009

♦ ♦ ♦

Instant Game Number 1218 "Veterans Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1218 is "VETERANS CASH". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1218 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1218.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STAR SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1218 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STAR SYMBOL	STAR
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1218), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1218-0000001-001.

K. Pack - A pack of "VETERANS CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VETERANS CASH" Instant Game No. 1218 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "VETERANS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "star" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "STAR" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes

under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1218. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1218 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	643,200	12.50
$4	739,680	10.87
$5	96,480	83.33
$10	112,560	71.43
$20	48,240	166.67
$50	59,831	134.38
$100	4,154	1,935.48
$1,000	47	171,063.83
$20,000	9	893,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1218 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1218, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903425
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2009

♦ ♦ ♦

Instant Game Number 1220 "Match 3 Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1220 is "MATCH 3 TRIPLER". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1220 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1220.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 3X SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $1,000.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1220 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
3X SYMBOL	WINX3
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 and $500.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1220), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1220-0000001-001.

K. Pack - A pack of "MATCH 3 TRIPLER" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MATCH 3 TRIPLER" Instant Game No. 1220 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MATCH 3 TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "3X" play symbol, the player wins TRIPLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No matching non-winning YOUR NUMBERS play symbols on a ticket.

C. The "3X" (tripler) play symbol will only appear on winning tickets as dictated by the prize structure.

D. No matching non-winning prize symbols.

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MATCH 3 TRIPLER" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MATCH 3 TRIPLER" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MATCH 3 TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MATCH 3 TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MATCH 3 TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1220. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1220 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	806,400	12.50
$2	873,600	11.54
$3	151,200	66.67
$4	100,800	100.00
$5	67,200	150.00
$10	67,200	150.00
$20	41,160	244.90
$50	9,030	1,116.28
$100	1,680	6,000.00
$500	78	129,230.77
$1,000	148	68,108.11

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1220 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1220, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903489
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 11, 2009

♦ ♦ ♦

Public Utility Commission of Texas

Change of Date and Location of Workshop

The staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss issues related to the Commission's present protections for disconnections and issues raised in previous proceedings related to disconnections, on Monday, August 31, 2009, at 10:00 a.m. in Room 1-100, located on the 1st floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 36131, *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans* has been established for this proceeding.

This notice is not a formal notice of proposed rulemaking; however, the comments of persons participating in the workshop will assist the commission in developing policy changes or determining the necessity for amending existing rules or adopting new rules to address severe weather.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 36131, an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Christine Wright, Competitive Markets Division, at (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200903385
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 6, 2009

♦ ♦ ♦

Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on August 4, 2009 with the Public Utility Commission of Texas (commission) for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of United Telephone Company of Texas, Inc. for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 37333.

The Application: United Telephone Company of Texas, Inc. (United) filed an application for an amendment to its Certificate of Convenience and Necessity Number 40039 for name change only. Applicant stated that United's parent, Embarq Corporation, became a wholly-owned

subsidiary of CenturyTel, Inc. on July 1, 2009. With the merger, CenturyTel, Inc. has registered the name "CenturyLink" as the trade name and service mark of the merged company. United seeks to change its name to United Telephone Company of Texas, Inc. d/b/a CenturyLink.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 28, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37333.

TRD-200903470
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2009

♦ ♦ ♦

Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on August 4, 2009 with the Public Utility Commission of Texas (commission) for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Central Telephone Company of Texas, Inc. for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 37334.

The Application: Central Telephone Company of Texas, Inc. (Central Telephone) filed an application for an amendment to its Certificate of Convenience and Necessity Number 40096 for name change only. Applicant stated that Central Telephone's parent, Embarq Corporation, became a wholly-owned subsidiary of CenturyTel, Inc. on July 1, 2009. With the merger, CenturyTel, Inc. has registered the name "CenturyLink" as the trade name and service mark of the merged company. Central Telephone seeks to change its name to Central Telephone Company of Texas, Inc. d/b/a CenturyLink.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 28, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37334.

TRD-200903473
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2009

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 4, 2009, Embarq filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60791. Applicant intends to amend its application to reflect a change in ownership/control, resulting in a change in name and change in service area.

The Application: Application of Embarq for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37335.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 26, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37335.

TRD-200903474
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2009

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 7, 2009, dPi Teleconnect, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60215. Applicant intends to amend its certificate to reflect a change in ownership of the shares from Rent-A-Center, Inc., to Amvensys Telecom Holding, LLC and Aasthi Holdings, Inc.

The Application: Application of dPi Teleconnect, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37341.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 26, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37341.

TRD-200903506
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 3, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of PRIDE Network, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 37331 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, optical services, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 26, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37331.

TRD-200903472
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2009

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 7, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Collin County, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Collin County, Texas. Docket Number 37232.

The Application: The application of Oncor Electric Delivery Company LLC (Oncor) for a proposed transmission line is designated the Parker Maxwell Creek 138-kV Transmission Line Project. The proposed transmission line project is a new 138-kV double-circuit transmission line connecting the new Oncor Parker Maxwell Creek Substation located east of the City of Parker to the existing Allen Switching Station - Ben Davis 138-kV transmission line. Oncor stated that the proposed transmission line is needed to address load growth in the area. The miles of right-of-way for this project will be approximately 3.5 miles (preferred route). The estimated date to energize facilities is May 2011.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 21, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37232.

TRD-200903504
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 7, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Wheeler County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Wheeler County, Texas. Docket Number 37260.

The Application: The application of Southwestern Public Service Company (SPS) for a proposed transmission line is designated the Wheeler to Howard Transmission Line Project. SPS stated the proposed 115-kV transmission line project is needed to provide reliable transmission service to existing customers and the growing oil field industry in the eastern Texas Panhandle area. The miles of right-of-way for this project will be approximately seven miles (preferred route). The estimated date to energize facilities is nine months after approval.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 21, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735- 2989. All comments should reference Docket Number 37260.

TRD-200903505
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Community Telephone Company, Inc. (Community Telephone) application filed with the Public Utility Commission of Texas (commission) on July 31, 2009, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Community Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171; Tariff Control Number 37318.

The Application: Community Telephone filed an application to implement a minor rate change for access line, key system and PBX rates by 10% for residential and business customers in the Joy, Bluegrove and Windthorst exchanges. The Company is also proposing to increase the Primary Service Order Charge, Line Connection Charge and Returned Check Charge for all residential and business customers. The proposed effective date for the proposed rate changes is December 1, 2009. The estimated annual revenue increase recognized by Community Telephone is $11,685 or less than 5% of Community Telephone's gross annual intrastate revenues. Community Telephone has 1,556 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by October 12, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 12, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 37318.

TRD-200903507

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Eastex Telephone Cooperative, Inc. (Eastex Telephone) application filed with the Public Utility Commission of Texas (commission) on July 31, 2009, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Eastex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171; Tariff Control Number 37319.

The Application: Eastex Telephone filed an application to increase rates associated with access lines, key systems, and PBX trunks by 10% for business and residential customers. The proposed effective date for the proposed rate changes is December 1, 2009. The estimated annual revenue increase recognized by Eastex Telephone is $274,004 or less than 5% of Eastex Telephone's gross annual intrastate revenues. Eastex Telephone has 27,596 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by October 12, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 12, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 37319.

TRD-200903508
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Hill Country Telephone Cooperative, Inc. (Hill Country Telephone) application filed with the Public Utility Commission of Texas (commission) on July 31, 2009, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Hill Country Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171; Tariff Control Number 37320.

The Application: Hill Country Telephone filed an application to increase rates associated with Directory Assistance Service for all residential and business customers. The proposed effective date for the proposed rate changes is December 1, 2009. The estimated annual revenue increase recognized by Hill Country Telephone is $97,359 or less than 5% of Hill Country Telephone's gross annual intrastate revenues. Hill Country Telephone has 15,786 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by October 12, 2009, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by October 12, 2009. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 37320.

TRD-200903509
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 11, 2009

♦ ♦ ♦

Revised Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on July 31, 2009, with the Public Utility Commission of Texas (commission) for an amendment to a certificated service area boundary in Gaines and Terry Counties, Texas.

Docket Style and Number: Application of Poka Lambro Telephone Cooperative, Inc. (Poka Lambro) to Amend a Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Loop Exchange and Union Exchange. Docket Number 37321.

The Application: The minor boundary amendment is being filed to realign the common serving boundary between the Loop exchange and the Union exchange of Poka Lambro. The amendment will transfer a portion of service area in the Union exchange to the Loop exchange to accommodate a customer currently located in the Union exchange who has asked to receive service from the Loop exchange.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 21, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37321.

TRD-200903471
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2009

♦ ♦ ♦

South East Texas Regional Planning Commission

Request for Proposal

Demographic and Model Input Data Development and On-Call Transportation Planning Assistance

Background

Since 2004, the Jefferson-Orange-Hardin Regional Transportation Study (JOHRTS) Area has been classified as a "marginal" nonattainment area under the eight hour standard for precursors to ozone formation. As a nonattainment area, the JOHRTS Metropolitan Transportation Plan (MTP) and Transportation Improvement Program (TIP) are required to demonstrate conformity with the National Ambient Air Quality Standards (NAAQS) established by the Clean Air Act Amendments (CAAA). The conformity process ensures that transportation plans and programs are consistent with federal, state, and local air quality plans for attaining the NAAQS. The current 2007 JOHRTS MTP-2030 will be updated to the **2010 JOHRTS MTP-2035** and is scheduled to undergo conformity analysis during the year 2010.

Objectives

The SETRPC periodically requires consultant assistance to supplement its in-house planning activities. The SETRPC is requesting written proposals for a Consultant to prepare demographic and travel model inputs to the JOHRTS travel model, to assist SETRPC- Metropolitan Planning Organization (MPO) technical staff with the revision and creation of text for various components of the 2010 JOHRTS MTP-2035 including conformity documentation, and to provide services on an as-needed basis to support transportation planning efforts at SETRPC. It is anticipated that the requested work would be performed between **January 2010 and September 2011.** Proposals are being requested from qualified firms or individuals with specific experience to perform the entire study.

If your firm is interested and qualified to complete this Demographic and Model Input Data Development and On-Call Transportation Planning Assistance, please contact our office to express your interest:

Bob Dickinson, Director, Transportation and Environmental Resources

South East Texas Regional Planning Commission

2210 Eastex Freeway, Beaumont, Texas 77703

Fax: (409) 729-6511

Email: bdickinson@setrpc.org

All responding firms will receive a complete Request for Proposal package.

Final proposals will be due by 12 noon CST on Friday, October 2, 2009.

TRD-200903492
Bob Dickinson
Director
South East Texas Regional Planning Commission
Filed: August 11, 2009

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Georgetown, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Georgetown Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Georgetown. TxDOT CSJ No.: 0914GRGTN. Current Scope: provide engineering/design services to improve Runway Safety Areas (RSA); rehabilitate corporate taxiway; widen taxilane to T-hangars E, F, & G; rehabilitate north hangar and mid-hangar access areas; and install obstruction lighting on NW RSA Runway 18 and near utility poles adjacent to RSA Runway 36 at Georgetown Municipal Airport.

The DBE Goal is 5%. TxDOT Project Manager is Dale Wright.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate aprons
2. Rehabilitate taxiways
3. Rehabilitate and mark Runway 18-36
4. Install PAPI-2 Runway 11-29
5. Install MITL
6. Rehabilitate hangar access areas
7. Rehabilitate Runway 18-36 edge lighting and threshold lights
8. Rehabilitate segmented circle
9. Rehabilitate lighted taxiway exit signs
10. Rehabilitate and light runway and taxiway identification signs and runway hold short signs.

The City of Georgetown reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at

www.txdot.gov/avn/avninfo/notice/consult/index.htm

by selecting "Georgetown Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

http://www.txdot.gov/business/projects/aviation.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a

previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 15, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at

http://www.txdot.gov/business/projects/aviation.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Dale Wright, Project Manager.

TRD-200903408
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 7, 2009

♦ ♦ ♦

University of North Texas Health Science Center at Fort Worth

Notice of Award of Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the University of North Texas Health Science Center at Fort Worth (UNTHSC) announces this notice of consultant contract award.

The invitation for consultants to provide proposals of consulting services (RFP) was published in the June 19, 2009, issue of the *Texas Register* (34 TexReg 4229).

The consultant will assist UNTHSC with the development of an academic and business plan for a potential new academic degree program accredited by the Liaison Committee on Medical Education (LME).

The contract is awarded to PricewaterhouseCoopers, LLP, 10 Tenth Street NW, Suite 1400, Atlanta, Georgia 30309. UNTHSC will pay an amount not to exceed $120,000. The term of the contract is August 3, 2009 through November 30, 2009. The consultant must submit documents, films, recordings, or reports that consultant is required to provide under the contract to UNTHSC no later than November 30, 2009.

TRD-200903479
Carolyn Cross
Associate Director of Purchasing
University of North Texas Health Science Center at Fort Worth
Filed: August 10, 2009

♦ ♦ ♦

Stephen F. Austin State University

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Charles H. Warlick, Ph.D. 4306 Oak Creek Dr., Nacogdoches, Texas 75965. The original contract was in the sum of $20,720 plus expenses. The first renewal was published in the August 27, 2004, issues of the *Texas Register* (29 TexReg 8451). The second renewal was published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3913). The third renewal was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7763). The fourth renewal was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5425). The contract will be renewed beginning September 1, 2009 and continue through August 31, 2010 with a total amount not to exceed $10,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call David Justus at (936) 468-4101.

TRD-200903368
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: August 6, 2009

♦ ♦ ♦

Texas Water Development Board

Public Hearing Notice for Fiscal Year 2010 Clean Water State Revolving Fund Intended Use Plan

The Texas Water Development Board (Board) will hold a public hearing on the draft Fiscal Year 2010 Clean Water State Revolving Fund (CWSRF) Intended Use Plan (IUP). The hearing will begin at 2:00 p.m. on September 8, 2009, in Room 170 of the Stephen F. Austin Building at 1700 N. Congress Ave., Austin, Texas 78701.

The IUP contains a list of wastewater projects in prioritized order which will be considered for funding in Fiscal Year 2010 through the CWSRF loan program. The draft Fiscal Year 2010 CWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the draft IUP. In addition, persons may submit written comments to General Counsel, Texas Water Development Board, P.O. Box, 13231, Austin, Texas 78711, or may file comments at rulescomments@twdb.state.tx.us. Comments and supplemental information provided outside of electronic submission at the address stated, written comments to the Board's General Counsel, or at the public hearing on September 8, 2009, will not be considered. Any comments and supplemental information received after 5:00 p.m. central standard time, October 8, 2009, will not be considered. Interested persons also may review the draft CWSRF IUP at the Board's website at: www.twdb.state.tx.us.

Please note that time limits on public comments may be imposed to allow all members of the public to be heard.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Leslie Anderson at (512) 463-7855 two (2) working days prior to the hearing so that appropriate arrangements can be made.

TRD-200903405
Ingrid K. Hansen
Deputy General Counsel
Texas Water Development Board
Filed: August 6, 2009

♦ ♦ ♦

Public Hearing Notice for Fiscal Year 2010 Drinking Water State Revolving Fund Intended Use Plan

The Texas Water Development Board (Board) will hold a public hearing on the draft Fiscal Year 2010 Drinking Water State Revolving Fund (DWSRF) Intended Use Plan (IUP). The hearing will begin at 2:00 p.m. on September 8, 2009, in Room 170 of the Stephen F. Austin Building at 1700 N. Congress Ave., Austin, Texas 78701.

The IUP contains a list of water projects in prioritized order which will be considered for funding in Fiscal Year 2010 through the DWSRF loan program. The draft Fiscal Year 2010 DWSRF IUP has been prepared pursuant to rules adopted by the TWDB in 31 Texas Administrative Code Chapter 371.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the draft IUP. In addition, persons may submit written comments to General Counsel, Texas Water Development Board, P.O. Box, 13231, Austin, Texas 78711, or may file comments at rulescomments@twdb.state.tx.us. Comments and supplemental information provided outside of electronic submission at the address stated, written comments to the Board's General Counsel, or at the public hearing on September 8, 2009, will not be considered. Any comments and supplemental information received after 5:00 p.m. central standard time, October 8, 2009, will not be considered. Interested persons also may review the draft DWSRF IUP at the Board's website at: www.twdb.state.tx.us.

Please note that time limits on public comments may be imposed to allow all members of the public to be heard.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Leslie Anderson at (512) 463-7855 two (2) working days prior to the hearing so that appropriate arrangements can be made.

TRD-200903502
Ingrid K. Hansen
Deputy General Counsel
Texas Water Development Board
Filed: August 11, 2009

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).